

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos. 16-CA-276089 et al.

EXXONMOBIL CORPORTATION, BEAUMONT REFINERY,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC.

Place: Houston, Texas
Date: February 13, 2023
Pages: 1 through 129
Volume: 1 of 4

OFFICIAL REPORTERS

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

EXXONMOBIL CORPORATION, BEAUMONT
REFINERY,

and

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED-INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-
CIO/CLC,

Case Nos.	16-CA-276089
	16-CA-276092
	16-CA-276702
	16-CA-277103
	16-CA-278743
	16-CA-287615
	16-CA-287625
	16-CA-288417

The above-titled matter came on for hearing pursuant to Notice, before Administrative Law Judge Jeffrey D. Wedekind, on Monday, the 13th day of February 2023, at the Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas at 9:08 a.m. central time.

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1							
2							
3							
4	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>	<u>VOIR DIRE</u>
5							
6	MARK MORGAN	56	69	126			
7		66					
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20	OPENING STATEMENT - GENERAL COUNSEL - page 41						
21	OPENING STATEMENT - RESPONDENT - page 43						
22							
23							
24							
25							

1		<u>E X H I B I T S</u>	
2			
3	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
4			
5	GENERAL COUNSEL		
6	1A through 1GG	8	8
7	2	59	61
8	3	61	62
9	4	62	63
10	JOINT		
11	1 through 65	54	55
12	78 through 80	54	55
13	RESPONDENT		
14	1	72	74
15	2	78	78
16	3	103	105
17	4	105	108
18	5	108	110
19	6	110	110
20	7	111	113
21	8	114	114
22	9	116	123
23	10	124	125
24			
25			

P R O C E E D I N G S

[Time Noted: 9:08 a.m. central time]

1 JUDGE WEDEKIND: Okay. This is the case of ExxonMobil
2 Corp, Beaumont Refinery Corp, 16-CA-276089, et al.

3 My name is Jeffrey Wedekind. I am the Administrative
4 Law Judge that has been assigned to the case. I'm posted
5 technically out of Houston or I guess it's now Oakland, but
6 I'm sorry. San Francisco. Also Oakland.

7 Why don't we start by getting all the attorneys to make
8 their Notice of Appearance, starting with the General
9 Counsel?
10

11 MR. DOOLEY: Bryan Dooley for the General Counsel.

12 MR. FLYNN: Patrick M. Flynn and Sasha Shapiro for the
13 United Steelworkers Charging Party, Your Honor.

14 JUDGE WEDEKIND: Okay and are you making an...

15 MR. FLYNN: This is Mark Morgan. He is the former
16 chairman of the Union's Workers Committee. He's our...

17 JUDGE WEDEKIND: Okay.

18 MR. FLYNN: ...Test Flying Rep.

19 JUDGE WEDEKIND: Okay. Great, and how about for the
20 Company?

21 MR. SPITZ: Jonathan Spitz from Jackson Lewis,
22 representing the Employer.

23 MR. STANLEY: Craig Stanley, ExxonMobil Corporation.

24 JUDGE WEDEKIND: Thank you.
25

1 MS. SHIH: Eva Shih, ExxonMobil Corporation.

2 MR. SCHUDROFF: Daniel Schudroff, Jackson Lewis.

3 JUDGE WEDEKIND: Okay. Thank you. I'll try to keep
4 you all in order. Don't change seats.

5 All right. Can we get the Formal Papers in at this
6 time?

7 MR. DOOLEY: Yes, Your Honor. I offer into evidence
8 the Formal Papers in this case. They have been marked for
9 identification as General Counsel Exhibits 1A through 1GG,
10 with 1GG being an Index and Description of the exhibits.
11 This exhibit has been shown to all parties and a copy of the
12 Index and Description has been given to the parties.

13 **(General Counsel's Exhibits 1A through 1GG, marked for**
14 **identification.)**

15 JUDGE WEDEKIND: Any objection?

16 MR. STANLEY: No objection, Your Honor.

17 MR. FLYNN: No objection, Your Honor.

18 JUDGE WEDEKIND: Okay. It's received. Thank you.

19 **(General Counsel's Exhibits 1A through 1GG, received into**
20 **evidence.)**

21 All right. Do you have any Stipulations that you want
22 to offer at this time?

23 MR. DOOLEY: We have one and I was having technical
24 issues this morning trying to print it out, so we'll get it
25 in a little bit later. It's just on the supervisors status

1 and then we have a bunch of joint exhibits that we can offer
2 when we're ready to do that.

3 JUDGE WEDEKIND: And so I don't forget, I believe on
4 our conference call, we agreed we would meet through
5 Thursday of this week and then try to reconvene, if
6 necessary, on March 21st for that week; is that correct?

7 MR. STANLEY: Correct, Your Honor. I have an update on
8 that.

9 JUDGE WEDEKIND: Okay.

10 MR. STANLEY: The company. Our witnesses are
11 available. Unfortunately, three will be travelling. Two
12 internationally and one domestically. They're trying to
13 move things around, but it sounded like you were open to
14 video testimony in a worse case so I just wanted to get that
15 on the record, that we're available, but may need to request
16 some video testimony.

17 JUDGE WEDEKIND: And you're talking about this week?

18 MR. STANLEY: No, I'm sorry. If we go to March 20th.
19 Yeah.

20 JUDGE WEDEKIND: If we go to March 21st. Okay. That's
21 fine.

22 MR. STANLEY: 21st.

23 JUDGE WEDEKIND: We can deal with that. We can cross
24 that later.

25 MR. STANLEY: Okay.

1 JUDGE WEDEKIND: All right. Why don't we take care of
2 the Sequestration Order then? I will issue one as requested
3 by the General Counsel. The Order will be consistent with
4 the model order set forth by the Board in Greyhound Lines S
5 3 19 NLRB 554. The year is 1995.

6 The Order imposes essentially two restrictions on all
7 witnesses or potential witnesses in the proceeding. The
8 first is that they may not observe or listen to the
9 testimony of other witnesses.

10 There are two exceptions. The first is witnesses who
11 are named individual parties are representing a party or are
12 shown to be essential to presenting a party's case. They
13 can observe or listen to the entire hearing. Does the
14 General Counsel have anyone they want to designate for that
15 purpose?

16 MR. DOOLEY: Mark Morgan, Your Honor.

17 JUDGE WEDEKIND: Mark?

18 MR. DOOLEY: Morgan. M-O-R-G-A-N.

19 JUDGE WEDEKIND: Okay. How about the Union?

20 MR. FLYNN: Yes, Your Honor. Brian Gross,
21 International Representative, he's not here at the moment,
22 but he will be here.

23 JUDGE WEDEKIND: Okay, and how about for the Company?

24 MR. STANLEY: Yes, Your Honor. Blake Berend, who may
25 testify, is our Corporate Representative in the back.

1 JUDGE WEDEKIND: Okay.

2 MR. STANLEY: And we have two non-witness observers
3 with us as well. Jason Sylvester and Anne Ealy.

4 JUDGE WEDEKIND: Okay. Thank you for identifying them.

5 THE COURT REPORTER: Anne who?

6 MR. STANLEY: Ealy. E-A-L-Y. Anne.

7 JUDGE WEDEKIND: All right, and my understanding is
8 that we do not have any discriminatees, right, in this case?
9 Alleged discriminatees?

10 MR. DOOLEY: That's correct, Your Honor.

11 JUDGE WEDEKIND: Okay. So that's another exception,
12 but it doesn't apply here.

13 All right. The second restriction is that the
14 witnesses may not discuss their own testimony with other
15 witnesses until the hearing is over.

16 Now, the rule also imposes certain obligations on
17 counsel. First, counsel may not, in any manner, inform a
18 witness about the testimony given by other witnesses for the
19 same side.

20 Second, counsel are expected to advise their witnesses
21 of the Sequestration Order and to otherwise police it.

22 Any questions or objections to the Order as I've stated
23 it?

24 MR. DOOLEY: No, Your Honor.

25 MR. STANLEY: No, Your Honor.

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1 JUDGE WEDEKIND: Okay.

2 MR. FLYNN: Your Honor, may we talk to our witnesses
3 and...

4 JUDGE WEDEKIND: Make sure they're out.

5 MR. FLYNN: ...have them leave at this time?

6 JUDGE WEDEKIND: Sure. That's fine.

7 MR. FLYNN: Thank you.

8 JUDGE WEDEKIND: Let's go off the record for a minute.

9 *[Off the record]*

10 MR. FLYNN: We have still one more witness, Your Honor,
11 that hadn't left yet.

12 JUDGE WEDEKIND: They're on their way now or? Okay.

13 Are we on the record? Okay.

14 Just one since we have a lot of attorneys in the room
15 here. I would appreciate it if only one attorney addresses
16 a witness at a time. You're obviously free to give each
17 other notes, but let's just keep one attorney per witness,
18 okay? Okay. Thank you. Everybody agree with that? All
19 right.

20 MR. FLYNN: Yes, sir.

21 JUDGE WEDEKIND: All right. Just a couple other
22 prehearing matters. Subpoenas. We had two Petitions to
23 Revoke that I was aware of. One was filed by the Company
24 seeking to revoke the General Counsel's subpoena. I believe
25 that was all resolved informally, correct?

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1 MR. DOOLEY: Correct, Your Honor.

2 JUDGE WEDEKIND: There's no ruling that I need to issue
3 today, right? Okay, and also the Charging Party, the
4 Company had served a subpoena on the Charging Party Union.
5 The Union filed a Petition to Revoke, correct?

6 MR. FLYNN: Yes, Your Honor.

7 JUDGE WEDEKIND: And I have already issued an Order on
8 that, right?

9 MR. FLYNN: Yes, Your Honor.

10 JUDGE WEDEKIND: Okay. Any other subpoena issues
11 anybody wants to raise?

12 MR. DOOLEY: None, Your Honor.

13 JUDGE WEDEKIND: Okay. All right. Shall we talk about
14 the partial settlement?

15 MR. SPITZ: Sure, Your Honor.

16 JUDGE WEDEKIND: Okay. Do you have a response to the
17 General Counsel's e-mail?

18 MR. SPITZ: Well, yeah. I mean, frankly, we were
19 surprised. It was not a partial settlement, which I suppose
20 may not be that surprising, but the representation that the
21 General Counsel's position is that the Complaint allegations
22 are sufficiently intertwined, that they should be heard and
23 considered together in context. That was directly contrary
24 to what we discussed on the call on Friday and has been
25 represented to the Employer throughout the investigation and

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1 then the pre-trial cooperation that we had with the General
2 Counsel.

3 So our position is that these allegations are
4 imminently severable, that the interest of justice would be
5 served and that, you know, the proposal by the General
6 Counsel is, you know, beyond the pale. In fact, I mean,
7 there were things there that I'm not even sure are in the
8 Complaint to be frank.

9 So we did redline it and we have a counter proposal.
10 Our position is that if the General Counsel and the Charging
11 Party don't join in, we would be prepared to enter into a
12 Settlement by Consent Order, which is outlined in Section 9-
13 440 of the Bench Book and governed by the Independent Stave
14 Standard as to whether all the surrounding circumstances
15 would render such a partial settlement just.

16 So we think it would and that the proposed resolution
17 is reasonable in light of the nature of the violations
18 alleged and the fact that as recently as Friday, General
19 Counsel represented that these were isolated allegations
20 that are not intertwined with the rest of the Complaint.

21 JUDGE WEDEKIND: Okay. So I was a little surprised to
22 see that, too, in your e-mail. Can you explain what you
23 meant by that?

24 MR. DOOLEY: Sure, Your Honor. So on Friday, I may
25 have misunderstood your question when you asked me if our

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1 theory on any of the other allegations relied on these
2 allegations that Respondent wants to settle. It's not our
3 theory that they're directly dependent. They would have to
4 prove one, two, -- you know, to establish the other
5 violations. But the General Counsel's position is that
6 these are sufficiently related. These are all bargaining
7 allegations and related allegations that occurred around the
8 time of the lockout in the context of the bargaining that
9 was ongoing and, you know, in the context of the lockout and
10 the General Counsel's position is that, you know, these
11 additional allegations can color the facts of the case if we
12 have surrounding, you know, additional unfair labor
13 practices and we won't an opportunity to try to prove those
14 if a partial settlement is approved over our objections.

15 JUDGE WEDEKIND: And what about the Union? Do you have
16 any comment on that?

17 MR. FLYNN: We concur with the General Counsel on the
18 situation at this point, Your Honor.

19 JUDGE WEDEKIND: Um-hum. Well, so I asked you on
20 Friday do you intend -- not whether you have to intend. Not
21 that you have to, but do you intend, either the General
22 Counsel or the Union, to rely on any way on these
23 allegations to establish the other allegations involving the
24 lockout and the decertification effort and your answer was
25 no. Both of you made that quite clear. So what do you mean

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1 by color...

2 MR. DOOLEY: Again, I may have misunderstood your
3 question on Friday. Our position is not that these
4 allegations are necessary to prove the other allegations.
5 Our position is that...

6 JUDGE WEDEKIND: I didn't ask you if it was necessary.

7 MR. DOOLEY: Right.

8 JUDGE WEDEKIND: I asked you if you were going to rely
9 on it and...

10 MR. DOOLEY: And again, I may have misunderstood you on
11 Friday.

12 JUDGE WEDEKIND: ...quite clear...

13 MR. DOOLEY: So if I did, I apologize.

14 JUDGE WEDEKIND: So now, you're saying -- you don't
15 think it's necessary, but you do intend to rely on it to
16 establish the violation?

17 MR. DOOLEY: As background and additional unlawful
18 practices that were going on at this time.

19 JUDGE WEDEKIND: What does that mean? That's
20 background. So...

21 MR. DOOLEY: Again...

22 JUDGE WEDEKIND: Are you going to say that the conduct
23 that occurred in these proposed settled allegations helped
24 to prove that the Company committed the other violations?

25 MR. DOOLEY: Yes. Again, not...

1 JUDGE WEDEKIND: In what way?

2 MR. DOOLEY: Just as, you know, additional unfair labor
3 practices that were committed by Respondent in the context
4 of this lockout, in the context of the bargaining that was
5 ongoing.

6 JUDGE WEDEKIND: But what does that mean? Just
7 additional unfair labor practices; what does that mean? I
8 mean, why -- just because someone committed refusal to
9 provide information violation, what does that have to do
10 with whether they discharged an employee? That's not
11 involved here, but I mean, I don't understand. What is the
12 connection between the two that you're making?

13 MR. DOOLEY: Again, they are, you know -- they're
14 bargaining violations and they were committed in the context
15 of the bargaining and it's all, you know, related to the
16 lockout and the negotiations that were going on at that
17 time.

18 JUDGE WEDEKIND: You're just not making it clear for
19 me. You're not -- if you want me not to approve the
20 settlement, you have to be clearer than that. You're just
21 not making a connection between the two. Oh, it's another
22 bargaining violation. What does that mean? How does that
23 relate to the lockout that the lockout was unlawful? Are
24 you going to argue the fact that they didn't provide
25 information proves that, helps to prove there's evidence

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1 that the lockout was unlawfully motivated? There is a
2 motivation allegation in the Complaint, right? On the
3 lockout?

4 MR. DOOLEY: Yes. That's correct.

5 JUDGE WEDEKIND: Not just inherently...

6 MR. DOOLEY: Correct.

7 JUDGE WEDEKIND: So how does that prove that the
8 lockout was unlawful?

9 MR. DOOLEY: Again, all I can really say is the General
10 Counsel's position is that these are related, you know,
11 bargaining allegations that occurred in this context and
12 that if there were, you know, additional violations, then
13 that provides relevant background to the allegations, you
14 know, directly related to the lockout.

15 JUDGE WEDEKIND: Do you have anything else to say about
16 this?

17 MR. FLYNN: Your Honor, I would say that, you know, to
18 answer your question directly, no, we're not intending to
19 argue that the information request refusal made the lockout
20 illegal or even the other unilateral changes that are
21 alleged.

22 JUDGE WEDEKIND: The same is true of the
23 decertification allegations, right?

24 MR. FLYNN: I didn't hear Your Honor.

25 JUDGE WEDEKIND: The same is true of the

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1 decertification allegations? There's no connection you're
2 saying? The answer is no?

3 MR. FLYNN: Correct.

4 JUDGE WEDEKIND: Right.

5 MR. FLYNN: That's correct.

6 JUDGE WEDEKIND: Okay.

7 MR. FLYNN: But I believe that they're important for,
8 as General Counsel said, background and context and one of
9 the things that I said Friday that if we had a full remedy
10 for all of these allegations and that we were able to put
11 the settlement agreement, and of course, it would have no
12 non-admission clause, put the settlement agreement in
13 evidence. You know, I might want to refer to some of those
14 other things that were going on in a brief. That was one of
15 my concerns.

16 JUDGE WEDEKIND: Okay. Let's take a look at the
17 redline version.

18 MR. SPITZ: Sure, and if I may, Your Honor...

19 MR. FLYNN: We've not seen that yet, Judge.

20 MR. SPITZ: And if I may, I mean, we're talking about a
21 relationship between the Employer and the Union that's
22 almost 100 years old. We're talking about bargaining, the
23 course of bargaining of roughly 15 months, and the
24 allegations that we're talking about here is two unilateral
25 changes that affected a handful of employees. A half an

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1 hour shift start change over two days I believe it was just
2 prior to the lockout to help facilitate safety issues and
3 getting people in and out of the facility and then provide
4 one list of employees among, you know, literally dozens, if
5 not 100 random information requests over the course of 15
6 months.

7 So, you know, to take the position that somehow these
8 color the Employer's course of conduct in a facility with
9 650 bargaining unit employees and 100 years of relationship
10 is a little bit farfetched.

11 So with that, I'm happy to give everybody a copy of our
12 proposed redlines, which are fairly, you know, standard.
13 They limit the settlement to the allegations, that these
14 kind of ancillary allegations...

15 JUDGE WEDEKIND: And can someone tell me -- oh, by the
16 way. Haven't you entered into a new collective bargaining
17 agreement with the Union?

18 MR. SPITZ: The Employer has. Yes.

19 JUDGE WEDEKIND: And when was that entered into?

20 MR. SPITZ: I believe it was March of 2022.

21 JUDGE WEDEKIND: And how many years is that for?

22 MR. SPITZ: Six.

23 JUDGE WEDEKIND: Six years. Okay, and how many -- do
24 you mind telling me how many total unit employees are there?

25 MR. SPITZ: Roughly 650.

1 JUDGE WEDEKIND: 650. Okay. Okay. So the redline and
2 red means taking it out?

3 MR. SPITZ: Yes, Your Honor.

4 JUDGE WEDEKIND: So just the black will remain?

5 MR. SPITZ: We left in the sort of generic pandemic
6 language, which is really not applicable. We tried to be as
7 generous as possible to put this in a reasonable position
8 for resolution.

9 JUDGE WEDEKIND: Okay. Thank you.

10 So you're -- okay. I see...

11 MR. SPITZ: And I might also add I think I got the case
12 numbers right. We have to doublecheck that at some point.

13 MR. FLYNN: Your Honor, can I confer with General
14 Counsel and Company Counsel a moment just outside?

15 JUDGE WEDEKIND: Sure. Let's go off the record. Good
16 idea.

17 *[Off the record]*

18 JUDGE WEDEKIND: All right. So I believe we have a
19 Revised Informal Settlement Agreement that as I understand
20 it, the Charging Party Union would agree to, sign on to?

21 MR. FLYNN: Yes, Your Honor.

22 JUDGE WEDEKIND: Okay. The company is okay with it?
23 The General Counsel, though, I don't believe you've heard
24 back from.

25 MR. DOOLEY: That's correct, Your Honor. We've

1 requested guidance from advice and we have not received a
2 response yet. The last I've heard is that we were opposed
3 to any partial. So we would ask, you know, if it would be
4 possible to reserve approving until we've got a chance to
5 give you a solid answer and possibly supplement our response
6 a little bit.

7 JUDGE WEDEKIND: Okay. I'm inclined to go ahead and
8 approve it and if the Regional Director wants to sign onto
9 it afterwards, that's fine. But I just don't see any reason
10 not to approve it at this point, particularly because the
11 Company has now agreed to include some of the language that
12 the General Counsel initially objected to that was not in
13 there and I'm very comfortable with the settlement in all
14 respects and so I just don't see a reason not to proceed at
15 this point.

16 So I am going to approve the settlement, applying the
17 factors under Independent Stave, which do apply to informal
18 settlements. The relevant factors, which I'll go through
19 very quickly. So there's like four factors the Board
20 typically looks at and the first is whether the -- you know,
21 which of the parties have agreed to it. The position taken
22 by the General Counsel. So we have the Charging Party Union
23 and the Company agreeing to it. The General Counsel -- the
24 only opposition aside from substantive revisions, which I
25 believe have all been addressed to my satisfaction and I

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1 think they are consistent with typical informal settlements.
2 The only opposition -- the reason the General Counsel poses
3 it is because it prefers to have complete settlements. It
4 doesn't like partial settlements and we've had some what I
5 consider vague references that colors of the case, but
6 there's no indication that the General Counsel would
7 actually rely on these violations, alleged violations, that
8 are being settled in order to prove the other violations.

9 So in light of that, I don't think the first factor
10 weighs against settlement. I think it weighs in favor of
11 settlement.

12 The second factor is whether the settlement is
13 reasonable in light of the nature of the violations alleged,
14 the risks inherent in litigation, and the stage of
15 litigation. I think that clearly weighs in favor of the
16 settlement. First of all, we haven't even started taking
17 evidence yet in this case. The settlement seems to provide
18 a full remedy; does the Union agree with that?

19 MR. FLYNN: Yes, Your Honor.

20 JUDGE WEDEKIND: Okay. If provides a full remedy and
21 as I indicated, it doesn't appear to significantly impact on
22 the other allegations that have not been settled.

23 Third is whether there has been any fraud, coercion, or
24 duress by any of the parties in reaching the agreement. I
25 don't believe there's been any allegations of fraud, duress,

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1 etcetera.

2 Fourth, whether the Respondent has engaged in a history
3 of violations of the Act or has breached previous settlement
4 agreements resolving unfair labor practice disputes. I
5 raised this issue at a prior conference call and the General
6 Counsel could not cite me any prior history; is that still
7 true?

8 MR. DOOLEY: Yes. As far as I know, Your Honor.

9 JUDGE WEDEKIND: So there's no prior history and as I
10 indicated earlier on the record, I believe, it's apparently
11 undisputed that the Company has entered into a new
12 collective bargaining agreement with the Union, correct?

13 MR. DOOLEY: Correct.

14 JUDGE WEDEKIND: Okay. So applying all of these
15 factors, I find that it's appropriate to approve the
16 settlement.

17 Can we print out a clean copy of it and we'll have
18 everybody sign it?

19 MR. SCHUDROFF: Yes. So, yes, Your Honor. I can work
20 on that either during lunch of...

21 JUDGE WEDEKIND: That's fine.

22 MR. SCHUDROFF: Okay. That's fine.

23 JUDGE WEDEKIND: Sure. All right. And...

24 MR. SCHUDROFF: The only thing I'll ask, Your Honor.
25 I'm sorry to interrupt you. It's I may just have -- Mr.

1 Dooley, I think, will have the -- we can do it later on this
2 evening at the hotel where we have -- I don't have printing
3 capabilities in this...

4 MR. FLYNN: I think Mr. Dooley has...

5 MR. SCHUDROFF: Mr. Dooley might so if I forward it to
6 Mr. Dooley, he might be able to...

7 JUDGE WEDEKIND: Can you do that for us?

8 MR. DOOLEY: Yeah. One other issue that was just
9 brought up was that the settlement leaves the back pay
10 numbers to be determined, but it doesn't say exactly who is
11 going to determine those numbers.

12 JUDGE WEDEKIND: Right. I understand that. It's
13 defined -- it seems like a fairly well defined back pay in
14 terms of, you know, it's the whatever it was.

15 MR. SCHUDROFF: Yes.

16 JUDGE WEDEKIND: So the Union doesn't seem to have a
17 problem with it.

18 MR. FLYNN: Your Honor said that we'd leave that to
19 compliance.

20 JUDGE WEDEKIND: I mean, if you're okay with that.

21 MR. FLYNN: Yes, sir.

22 JUDGE WEDEKIND: You don't have any compliance concerns
23 about it, do you?

24 MR. FLYNN: No, sir.

25 JUDGE WEDEKIND: Yeah. So I understand. Normally, you

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1 would want that liquidated, but under the circumstances...

2 MR. DOOLEY: Right, and normally, if it wasn't spelled
3 out, it would just say who it's going to be...

4 JUDGE WEDEKIND: Yeah.

5 MR. DOOLEY: ...determined by. Who is coming up with
6 those numbers basically.

7 JUDGE WEDEKIND: Yeah, but they have a long-standing
8 bargaining relationship. They have a new collective
9 bargaining agreement and the Union is comfortable that it
10 won't be a problem identifying who and how much, right?

11 MR. FLYNN: I think the Agency's compliance department
12 will be able to verify whatever data is furnished by the
13 Company and cross-checked by the Charging Party Union.

14 JUDGE WEDEKIND: All right.

15 MR. FLYNN: And it's either an hour or a half-hour in
16 terms of dollars and cents.

17 JUDGE WEDEKIND: Yeah.

18 MR. FLYNN: But the only exact unknown is the identity
19 of the number of employees. The Company now is estimating
20 about 42.

21 JUDGE WEDEKIND: Um-hum.

22 MR. FLYNN: So...

23 MS. SHIH: We have a preliminary list prepared.

24 JUDGE WEDEKIND: Okay. That's fine.

25 MS. SHIH: That we can provide.

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1 JUDGE WEDEKIND: All right. If you can reach some kind
2 of agreement as to exactly who, over lunch, before we get
3 the final signed and you want to include that in it, that's
4 fine. If not, I'm comfortable with it as it is. Okay?

5 MR. FLYNN: Yes, sir.

6 JUDGE WEDEKIND: All right. Anything else that General
7 Counsel wants to add?

8 MR. DOOLEY: Not at this point, Your Honor.

9 JUDGE WEDEKIND: So I believe the appropriate thing to
10 do -- now, these charges that are being settled, they are
11 distinct, right? There's no overlap? Like, one charge
12 includes these other allegations? I mean, should I --
13 should the charges be dismissed? Is that...

14 MR. SPITZ: I think that's right.

15 JUDGE WEDEKIND: ...the appropriate thing to do?

16 MR. SPITZ: That's right, Your Honor.

17 JUDGE WEDEKIND: Okay. All right. So I just want to
18 make sure and it's a Consolidated Complaint so I don't
19 believe we're dismissing the Complaint, but...

20 MR. SPITZ: Bryan, to the extent -- I understand the
21 General Counsel doesn't sign on, but have you taken a look
22 at the charge numbers and...

23 MR. DOOLEY: I haven't had a chance to make sure that
24 we've got the right ones included there.

25 MR. SPITZ: I'm fairly certain we have the right ones,

1 Your Honor.

2 MS. SHIH: I did...

3 MR. SPITZ: Okay. So.

4 JUDGE WEDEKIND: Well, we can check that over lunch if
5 we want to do that as well, but I will be -- as I've
6 approved the settlement -- well, I'm not sure. Does the
7 settlement say anything about withdrawing the charges? It
8 does not, does it?

9 MR. SCHUDROFF: It does not.

10 JUDGE WEDEKIND: I'm not sure it's appropriate for me
11 to actually dismiss the charges.

12 But in any event, I'll address this after lunch. But
13 in any event, I will be remanding the case to the Regional
14 Director to ensure compliance.

15 All right. Hopefully, as I said, hopefully, we'll get
16 a copy after lunch and we'll all sign it.

17 All right. It's almost 11:30. We have an attorney
18 client issue outstanding. Do you want to address that
19 briefly before lunch and then maybe we can start -- do you
20 want to start off the record or on the record?

21 MR. DOOLEY: I don't know how much we need to get into
22 on the record at this point. Like I said, what I'm going to
23 be doing is requesting a witness, a subpoena for the witness
24 that we need for...

25 MR. STANLEY: Sorry to interrupt, Your Honor, but we

1 would prefer this be on the record.

2 JUDGE WEDEKIND: Okay.

3 MR. STANLEY: Any discussion of this privilege issue.

4 JUDGE WEDEKIND: You want to be on the record?

5 MR. STANLEY: Please.

6 JUDGE WEDEKIND: Okay. We're on the record now.

7 MR. STANLEY: Thank you.

8 JUDGE WEDEKIND: Okay. Go ahead.

9 MR. DOOLEY: So yeah. The way that I intended to
10 handle this situation is to issue a subpoena so that we can
11 have this witness testify tomorrow by video conference about
12 how these documents were accessed and obtained and what they
13 are essentially and before we get into that, I don't know
14 how much we really need to talk about it on the record.

15 JUDGE WEDEKIND: Okay. Well, that's -- that's why --
16 is there anything, any problem with that proposal?

17 MR. STANLEY: Well, yes.

18 JUDGE WEDEKIND: Okay.

19 MR. STANLEY: Your Honor, General Counsel appears to be
20 minimizing this issue. I mean, like you, we learned for the
21 first time last Friday that there was this privilege issue.
22 Like you, we know nothing further about it. We left
23 Friday's call thinking that General Counsel would follow up
24 with us and we'd discuss how to deal with this privilege
25 issue.

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1 JUDGE WEDEKIND: Um-hum.

2 MR. STANLEY: Never heard anything. We reached out on
3 Friday afternoon just to try get base information. More
4 interested in who the witness was. What we wanted to be
5 able to conduct our own investigation from a privilege
6 perspective.

7 JUDGE WEDEKIND: Um-hum.

8 MR. STANLEY: General Counsel wouldn't give us any
9 information at all. We have -- we don't even have a general
10 description of the document, how it came about. So we've
11 been able to do nothing. We reached out, hoping to avoid
12 adjourning the trial or...

13 JUDGE WEDEKIND: Um-hum.

14 MR. STANLEY: ...taking some time away because, you
15 know, the Company takes privilege very seriously. I know
16 the Agency does as well.

17 JUDGE WEDEKIND: Sure.

18 MR. STANLEY: We just don't know -- we have no idea how
19 to deal with it at this point and...

20 JUDGE WEDEKIND: Right.

21 MR. STANLEY: ...if they're going to go forward and try
22 to introduce that document, we're going to have to deal with
23 it then. So I mean, whether this is inadvertent disclosure
24 under 502, however we characterize this. When I had to deal
25 with this in private practice, I get a privileged document

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1 that I wasn't supposed to get or didn't know I was getting,
2 I set that document to the side and I immediately contact
3 the other side and try to work things out. We'd like an
4 accounting of who has seen this document. This is a very,
5 potentially a very significant issue. We're less concerned,
6 frankly, Your Honor, with the substance of the document.
7 It's with the privilege issue and what that could mean for
8 the Corporation, perhaps even in this case and we don't have
9 enough information, again, for us to do anything that avoids
10 having to take time away tomorrow.

11 JUDGE WEDEKIND: All right. Okay. So why not just go
12 ahead and let us all see this document?

13 MR. DOOLEY: I can run that by management. Again, part
14 of the issue here is we're dealing with headquarters. This
15 is an advice case and this information is information that
16 came to our attention very recently. Otherwise, we would
17 have tried to deal with it earlier on. I've been scrambling
18 over the weekend to make sure that we're doing everything
19 properly and that we're actually going to be able to, you
20 know, potentially get these documents in because if not, I
21 don't want to waste everybody's time.

22 So are you proposing that we all just look at the
23 documents?

24 JUDGE WEDEKIND: Well, have you already made the
25 decision to introduce the document?

1 MR. DOOLEY: I intend to call this witness and lay the
2 foundation for how these documents were obtained and
3 basically what they are and that there was nothing, you
4 know, improperly done there, and then, you know, introduce
5 the documents. Yes, if I've established those facts to
6 establish a waiver of any privilege that might play.

7 JUDGE WEDEKIND: So at this point, you're not sure
8 whether you're going to introduce it or not because you
9 don't know the facts?

10 MR. DOOLEY: At this point, I intend to.

11 JUDGE WEDEKIND: So you do know the facts. You just
12 want to get...

13 MR. DOOLEY: Yes.

14 JUDGE WEDEKIND: You want to call the witness.

15 MR. DOOLEY: Yes.

16 JUDGE WEDEKIND: Okay. Well, under those
17 circumstances, why not share the document? What's wrong
18 with sharing the document so everybody is prepared tomorrow
19 to deal with the issue? Otherwise, there's going to be a
20 delay, right, probably?

21 MR. STANLEY: Yes. I think it's unavoidable.

22 JUDGE WEDEKIND: Yeah. So let's...

23 MR. DOOLEY: So I need, you know, approval to release
24 anything outside the Agency. So I have to get approval from
25 management to do that and I think Pat would just like to

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1 have a quick word here as well.

2 JUDGE WEDEKIND: Sure. Go ahead.

3 MR. DOOLEY: If we could take a break.

4 MR. FLYNN: Your Honor, can Mr. Dooley and I confer
5 outside? Maybe...

6 JUDGE WEDEKIND: If you think it'll help.

7 MR. FLYNN: I hope.

8 JUDGE WEDEKIND: Okay.

9 MR. FLYNN: Okay.

10 JUDGE WEDEKIND: Sure. Let's go off the record for a
11 minute.

12 *[Off the record]*

13 JUDGE WEDEKIND: All right. We have a couple things to
14 clean up here. We do have a signed settlement now between
15 the Company and the Charging Party Union and I have approved
16 it. Everybody should have a copy now. The only thing I
17 noticed, for some reason, it doesn't say Exhibit A on the
18 attachment. What I'm suggesting is that we all just write
19 Exhibit A at the top of the attachment, okay?

20 MR. SCHUDROFF: Your Honor, my apologies. The original
21 one, I marked it as Exhibit A...

22 JUDGE WEDEKIND: I know. I know. I heard you. Yeah.
23 Let's just all do that. Everybody has -- it's on the record
24 that we did that and it's done and congratulations to
25 everybody. I know that General Counsel is going to appeal

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1 it, but...

2 MR. DOOLEY: Yes, Your Honor. I will just say on the
3 record that the General Counsel maintains its objection,
4 intends to file a special appeal. So we'll either need to,
5 you know, adjourn until that's resolved or just keep the
6 record open to wait for a decision from the Board on that.

7 JUDGE WEDEKIND: That's fine. My preference would be
8 just keep the record open if necessary. We'll see.

9 Now, we have this issue that was raised about the
10 attorney client privilege with respect to some documents
11 that came into the General Counsel's possession and my
12 understanding is that at the request of the Respondent, a
13 copy of those documents has been provided to the Respondent.
14 So you have them at this point?

15 MR. STANLEY: Yeah. It still hasn't come through to
16 most of us, but we're going to be able to...

17 JUDGE WEDEKIND: Okay. It's working on it.

18 MR. STANLEY: ...review that.

19 JUDGE WEDEKIND: Right. So you'll be somewhat
20 prepared, hopefully tomorrow, to address the issue. The
21 plan is to have a witness testify tomorrow?

22 MR. DOOLEY: That's correct, Your Honor.

23 JUDGE WEDEKIND: About how he/she came into possession
24 of the documents and...

25 MR. DOOLEY: That's correct and the witness's

1 availability is somewhat limited just due to the short
2 notice and other obligations. They'll be available from
3 noon Eastern to three p.m. Eastern. So if we could try to
4 get them in by video during that window, then that would be
5 great.

6 JUDGE WEDEKIND: Okay, and you have a plan about how to
7 do that by video?

8 MR. DOOLEY: Yep.

9 JUDGE WEDEKIND: Okay.

10 MR. STANLEY: Is the witness available today by chance?

11 MR. DOOLEY: No.

12 MR. STANLEY: No? Okay.

13 JUDGE WEDEKIND: Just to also make clear, Respondent
14 ask that I not look at the document, not be told the
15 substance of the document at this point and I agreed not to
16 do that. That's fine. I did, however, ask for some
17 background so I can be prepared tomorrow and the General
18 Counsel provided some background on it. If anyone wants to
19 put that on the record, feel free. Anything else you want
20 to...

21 MR. STANLEY: Yeah. The Company proposes bifurcating
22 the issues.

23 JUDGE WEDEKIND: Um-hum.

24 MR. STANLEY: We're prepared to go forward on the rest
25 of the case, but we would like to first -- first of all, we

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1 need the documents in their native form and in addition to
2 that, we think we should hear from this witness just on the
3 privilege and waiver related issues. It looks like this is
4 going to be a waiver issue. The burden is on the General
5 Counsel and the Union, but we propose bifurcating in that
6 manner. Dealing with that. Again, we're not suggesting
7 delaying the rest of the case.

8 JUDGE WEDEKIND: Um-hum.

9 MR. STANLEY: But until there's resolution on that and
10 the General Counsel satisfies its burden in the face of
11 arguments that we may make, I think it makes sense to,
12 again, see the actual documents tomorrow. But first, deal
13 with the waiver issue.

14 JUDGE WEDEKIND: I don't have a problem not looking at
15 the documents until such time as I have to look at the
16 documents to make a decision. I'm going to have to look at
17 it. Maybe. I think I probably would and Board Law would
18 allow me to. I'm not a jury.

19 MR. STANLEY: Understood. Understood. We just want to
20 make sure we have the full -- to the extent that we're going
21 to make arguments against waiver and against the admission
22 of these documents altogether, we just want to make sure we
23 have sufficient time to prepare that argument after hearing
24 from the witness and seeing the documents in their native
25 form.

1 JUDGE WEDEKIND: And I -- just my senses is that
2 there's not going to be any problem with that, right?

3 After this witness testified, the only -- testifies,
4 the only issue will be whether to allow it, right?

5 MR. DOOLEY: Yes, I believe so, Your Honor. There
6 might be on some of them some additional, you know,
7 information that we want to get about the documents from
8 Respondent's witnesses, but...

9 JUDGE WEDEKIND: Um-hum.

10 MR. DOOLEY: ...in terms of introducing the document, I
11 plan to, or the documents, I plan to do that through the
12 witness.

13 JUDGE WEDEKIND: Okay. So we can always put off a
14 final ruling on that?

15 MR. STANLEY: Can we get the native form documents like
16 right now?

17 MR. DOOLEY: What do you mean native...

18 JUDGE WEDEKIND: I'm not sure what that means.

19 MS. SHIH: Native format.

20 MR. STANLEY: Native format. Sorry. Not the -- it's
21 hard for us to determine exactly what form these are in. A
22 number of them appear to be photos.

23 MR. DOOLEY: They are photos.

24 JUDGE WEDEKIND: Yeah.

25 MR. DOOLEY: And that's what I have and the witness...

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1 MR. STANLEY: That's all you have? And the Union?

2 MR. DOOLEY: ...as to the reason for that.

3 MS. SHAPIRO: That's all we have.

4 JUDGE WEDEKIND: Photos. Yeah.

5 MR. SCHUDROFF: So, Your Honor, I mean, that's -- in
6 order to determine whether or not there's a disclosure here
7 at issue, we'd have to see the native, the documents in
8 their native format in order for us to do our own forensic
9 investigation to determine how, if at all, these documents
10 were pulled from wherever they were pulled from and by whom.

11 JUDGE WEDEKIND: Well, you might find out some
12 information tomorrow and if that person has the original
13 photo, there might be some information about when it was
14 taken, right? Dates and it depends on -- if it's a
15 cellphone, isn't there information on there?

16 MR. SCHUDROFF: There should be, but we would need to
17 have the ability to inspect that.

18 JUDGE WEDEKIND: Yeah. If it's...

19 MR. SCHUDROFF: If that person testifies.

20 JUDGE WEDEKIND: If it's still -- yeah.

21 MR. STANLEY: And the deck that was included, we
22 haven't been through all of that yet because -- so slow, but
23 those were -- those didn't appear to be photos.

24 MR. DOOLEY: The PDF of what looks like a PowerPoint
25 presentation?

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1 MR. STANLEY: Yes.

2 MR. DOOLEY: My understanding is that those were also
3 photos. Everything was -- nothing was downloaded directly.

4 MR. SPITZ: So they're screenshots I guess.

5 MR. DOOLEY: I believe they were taken with a phone and
6 then cropped to only show the PowerPoint and not the rest of
7 the desktop to avoid identifying who was accessing it.

8 JUDGE WEDEKIND: Also, the General Counsel has already
9 said off the record, if you want to put it on the record,
10 his understanding of when these were obtained.

11 MR. DOOLEY: Yeah. My understanding is, and it's a
12 little bit fuzzy, but sometime around April of 2022, maybe a
13 little before then...

14 JUDGE WEDEKIND: And the General Counsel obtained it
15 when?

16 MR. DOOLEY: February 2nd of 2023.

17 MR. STANLEY: My goodness.

18 JUDGE WEDEKIND: From? From?

19 MR. DOOLEY: From counsel for the USW Charging Party.

20 MR. SPITZ: So, Your Honor, counsel for...

21 MR. STANLEY: So it's been 11 days and we get a vague
22 reference on Friday. Try to discuss it with the General
23 Counsel and we get this thrown at us today. How...

24 MR. DOOLEY: Again, we were trying to...

25 MR. STANLEY: The company would also like to know when

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1 the Union received these documents.

2 MR. DOOLEY: We were trying to vet the documents to
3 make sure that...

4 MR. STANLEY: Counsel for the Union. Excuse me.

5 MR. DOOLEY: ...if we were going to try to introduce
6 them, then we could actually get them in. Otherwise, we
7 were just wasting everyone's time and that took me pretty
8 much through last week to identify a witness and then over a
9 weekend...

10 JUDGE WEDEKIND: Yeah.

11 MR. DOOLEY: ...scrambling around trying to get answers
12 to all of our questions.

13 JUDGE WEDEKIND: Yeah. The primary issue is whether or
14 not it should come in or not. Waiver. I understand what
15 you're saying and whether 11 days is too long, I don't know.
16 But we'll go forward. Take the testimony tomorrow and you
17 consider it and make your arguments and I'll make a
18 decision.

19 MR. STANLEY: Just one more time.

20 JUDGE WEDEKIND: Yeah.

21 MR. STANLEY: I do think it may be relevant to any
22 future waiver argument to know when the Union and Counsel
23 for the Union came into possession of these documents as
24 well. I think the conduct of parties is relevant in that
25 analysis.

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1 JUDGE WEDEKIND: Okay.

2 MR. SCHUDROFF: Your Honor, in particular, Federal
3 Civil Procedure 26(b)5 would be applicable in these
4 circumstances.

5 JUDGE WEDEKIND: Okay. I'll take a look at that.
6 Okay. Want to do Opening Statements?

7 MR. DOOLEY: Sure, Your Honor.

8 JUDGE WEDEKIND: Sure. Okay.

9 OPENING STATEMENT - GENERAL COUNSEL

10 MR. DOOLEY: Your Honor, this case concerns allegations
11 that Respondent unlawfully locked out employees at its
12 Beaumont, Texas facility during negotiations and provided
13 more than ministerial aid to an effort to decertify the
14 Union.

15 The Union in response began negotiations for a
16 successor collective bargaining agreement in January of
17 2021. In February 2021, the employee, Brian Sanderson,
18 began an effort to decertify the Union.

19 Respondent assisted Sanderson's effort, including by
20 allowing him to affix a lockbox to a wall in Respondent's
21 facility to collect signatures.

22 On February 15th, 2021, the Union provided Respondent
23 with a 75-day Advance Strike Notification and Respondent
24 replied with a 75-day Advance Lockout Notice the same day.

25 During the 75-day Notice period, the Union gave

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1 Respondent no reason to believe a strike was imminent. In
2 fact, the Union made several requests to extend the current
3 agreement during negotiations, which Respondent rejected.

4 Parties had relied on extensions to avoid a work
5 stoppage during the previous most recent negotiations in
6 2015 and no strike has occurred at Respondent's Beaumont
7 facility since the 1980's.

8 Nevertheless, immediately upon expiration of the 75-day
9 Notice period, Respondent initiated a lockout of employees.
10 The lockout continued from May 1st, 2021 until the parties
11 reached an agreement on a new contract in about February
12 2022.

13 During the lockout, Respondent continued to operate its
14 Beaumont facility using temporary and non-bargaining unit
15 employees. As the lockout continued and after Sanderson
16 filed his decertification petition with the Board,
17 Respondent issued a series of communications to employees,
18 which among other things, urged employees to vote against
19 the Union and stated that the lockout would end with a
20 successful decertification vote or a majority of employees
21 signing a petition of disaffection. These communications
22 were rendered further unlawful assistance to the
23 decertification effort and rendered the lockout itself
24 unlawful.

25 In addition to the theory that the lockout was unlawful

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1 under Extent Law, the General Counsel intends to urge the
2 Board to reconsider its decision in Harder Equipment.
3 That's 280 NLRB 597 1986, which permits employers to utilize
4 temporary replacements during an offensive lockout and
5 instead hold that replacing employees during a lockout is
6 inherently destructive of employee rights, except in
7 narrowly circumscribed and carefully defined defensive
8 lockouts.

9 Counsel for the General Counsel respectfully asks Your
10 Honor to find Respondent violated the Act as alleged in the
11 Complaint. As part of the remedy for the alleged unfair
12 labor practice, General Counsel requests an Order making
13 affected employees whole and all of their appropriate
14 remedies. Thank you, Your Honor.

15 JUDGE WEDEKIND: All right. Thank you.

16 Does the Union have anything to offer in addition?

17 MR. FLYNN: Your Honor, the Charing Party wholly
18 supports the General Counsel's theory of the case and I
19 won't make any further opening statement at this time.

20 JUDGE WEDEKIND: Okay. Thank you.

21 How about the Respondent? Are you prepared to make an
22 Opening Statement?

23 MS. SHIH: Yes, Your Honor, we are.

24 JUDGE WEDEKIND: Okay

25 OPENING STATEMENT - RESPONDENT

1 MS. SHIH: Thank you.

2 The General Counsel has the burden of proof in this
3 case. Mr. Dooley and the Union make an incredible
4 allegation that ExxonMobil locked out over 600 employees for
5 over ten months in a desperate and a questionable gamble to
6 decertify a union that has represented its employees for
7 almost 100 years.

8 They have no evidence, only conjecture, and worse, the
9 General Counsel has no explanation for an irreconcilable
10 inconsistency that the parties here bargained for over a
11 year. During that period, it took over eight months for a
12 single employee to collect enough signatures, a bare legal
13 minimum of 30 percent, to support a decertification
14 petition.

15 Yet, it is undisputed that the Employer bargained in
16 good faith during the entire lockout. In fact, allegations
17 of bad faith bargaining were investigated and were dismissed
18 in this case.

19 Thus, General Counsel alleges during the eight-month
20 period when the company puts its multi-billion-dollar
21 operation at risk and threw over 600 lives into turmoil out
22 of animus for a union that has represented thousands of the
23 company's employees at multiple locations for as much as 100
24 years, that it simultaneously bargained in good faith in an
25 effort to reach a successor contract.

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1 That contradiction cannot be reconciled. Why would an
2 employer lock out 600 employees in an attempt to decertify
3 its union and at the same time bargain in good faith in an
4 effort to reach an agreement that would block the
5 decertification effort. It makes no sense and it did not
6 happen.

7 Contrary to the speculative story we've heard from the
8 General Counsel, the evidence will show that an employee-
9 initiated decertification effort had nothing to do with the
10 Company's decision to lockout employees for the first time
11 in its history. Decertification was not even a factor, let
12 alone a determining factor. The Company believes that the
13 General Counsel knows this fact, but simply did not approve
14 of the lockout. So it no choice but, one, to try to
15 overturn long standing Board and Supreme Court precedent
16 and, two, to allege a baseless theory of unlawful
17 motivation.

18 The real story and what the evidence will show is that
19 the Company considered and discussed the possibility of a
20 lockout long before there was any inkling of a
21 decertification effort. The lockout was a culmination of
22 events that started even before the parties bargained their
23 previous contract in 2015 and continued through the 2020
24 COVID pandemic and into 2021 bargaining.

25 The Company's witnesses will provide the details of

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1 this timeline and story through their testimony, but at a
2 very high level, the story goes back to around 2012 when the
3 Beaumont Refinery was one of the worst performing refineries
4 within the company worldwide. In order to avoid being sold
5 and because it was a potential target for a historic Gulf
6 Coast Refinery Expansion, Beaumont was tasked with a
7 monumental challenge to turn itself around by improving
8 operations and making the contract more competitive with
9 other company sites. It was a massive undertaking, but the
10 team's accomplishments were frankly stunning.

11 In a matter of four to five years, Beaumont went from
12 the worst performing refinery to one of the best in the
13 world. As a result of that turnaround, the Company
14 tentatively decided to invest in Beaumont for BLADE, a two
15 billion dollar project that was the U.S.'s largest refinery
16 expansion in a decade and would increase Beaumont Refinery
17 production by nearly 70 percent.

18 This tentative decision came with two conditions.
19 First, to sustain that operational improvement and, second,
20 to negotiate more favorable contract terms as Beaumont's
21 contract was the least competitive among the ExxonMobil
22 circuit.

23 BLADE heavily influenced the Company's posture in 2015
24 bargaining. The Company wanted to do everything possible to
25 avoid a strike during peak BLADE preparation and

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1 construction. As a result, the Company pushed hard for two
2 things in 2015. A 75-day strike and lockout notice
3 provision and taking Beaumont off the industry pattern.

4 The refinery industry pattern is voluntary and being on
5 pattern simply means that a refinery has a contract
6 expiration date around the same time as other industry
7 refineries. As you'll hear, pattern sites are particularly
8 susceptible to industry wide strikes and that was especially
9 true for the Company, which had four sites on pattern and
10 the pattern contract expiration of January 31, 2019 would've
11 been during the most important phase of BLADE preparation
12 and construction. So it was important for the Company to
13 get Beaumont off pattern.

14 Setting aside the impact a strike would have on BLADE
15 construction, generally speaking, a strike at a refinery can
16 be devastating and potentially even deadly. A refinery is
17 not an assembly line that can easily be stopped and started.
18 Refining is dangerous and it is particularly dangerous
19 during a shutdown or a restart. ExxonMobil cannot sit back
20 and risk a Union striking with little or no notice. It's
21 simply too dangerous. It's impossible to continue
22 operations without backup employees ready to immediately,
23 literally immediately, take over the posts left by strikers.

24 For those reasons, ExxonMobil has long employed an EMCO
25 team. EMCO stands for ExxonMobil Continuous Operations.

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1 That team works year round to prepare for bargaining at one
2 or more of the Company's 25 union represented sites. The
3 EMCO team's objective is to prepare a site to operate with
4 supervisors, engineers, and managers if the company
5 initiates a lockout.

6 To say this is a major endeavor is an understatement.
7 Not only does it require months of exhaustive training and
8 preparation, but it is exceedingly costly.

9 2015 Beaumont bargaining where the parties went four
10 and a half months past contract expiration was the first
11 time that the Company had to initiate a full and extended
12 EMCO plan for the entire four and a half months and at a
13 cost of around \$30 million.

14 Fortunately, the parties did ultimately reach agreement
15 and the Company obtained a 75-day strike and lockout notice
16 provision and moved Beaumont off pattern to clear the way
17 for BLADE.

18 But 2015 was a major learning event and the Company
19 realized that it could never again remain in EMCO mode
20 indefinitely or even for an extended period of time.
21 Remaining off pattern moving forward and maintaining the 75-
22 day strike notice provision became critically important.

23 The Company started preparing for 2021 bargaining in
24 early 2020. The severe economic losses resulting from COVID
25 made it even more urgent for the company to achieve the

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1 contractual efficiencies that management had expected for
2 years. The Company suffered a historic annual -- excuse me
3 -- second quarter 2020 loss, which turned into a historic
4 annual loss of about \$22 billion in 2020, in addition to
5 laying off 14,000 employees worldwide, as well as numerous
6 other cost cutting measures.

7 The Company's 2020 bargaining preparation, the
8 Company's 2021 bargaining, and the May 2021 lockout, which
9 was the first work stoppage in company history, must all be
10 viewed in this context. The ten-month lockout was
11 unprecedented, but this was an unprecedented time. It was
12 essentially the perfect storm.

13 For 2021 bargaining, the Company focused on improving
14 the terms of the contract, which it was charged with doing
15 years earlier, but became more urgent due to the Company's
16 financial distress resulting from COVID.

17 Ultimately, the Company identified four core objectives
18 to keep the Beaumont Refinery and the blending and packaging
19 plant economically competitive and efficient, which you'll
20 hear about from the Company's witnesses.

21 For the first time in Company history before bargaining
22 even started, the Company discussed the possibility of
23 having to initiate an offensive lockout if it could not
24 achieve these critical objectives.

25 For context, the EMCO team had historically assumed a

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1 lockout only in response to a strike, but this time was
2 different. The Company needed to improve the contract and
3 knew that bargaining would be contentious. You will also
4 hear that the Union expected a contentious negotiation. In
5 fact, the Union voted to authorize a strike a month before
6 bargaining even started.

7 The core objectives ultimately became must-haves for
8 the Company. Unfortunately, once the parties started
9 bargaining on January 11th, 2021, very little progress was
10 made and on the Company's core objectives, the parties made
11 no progress at all. In fact, the Union made it clear that
12 it would never agree to any of them to the degree required
13 by the Company. After weeks of no progress, the Company
14 submitted its last, best, and final offer on January 31st,
15 the day the contract was set to expire.

16 The parties made no further progress after the
17 Company's last, best, and final and the Union refused to
18 take it to its members for a vote. On February 15th, the
19 Union sent the Company a 75-day Strike Notice. This was
20 only the third time in company history that any union had
21 issued a Strike Notice. The Company responded that same day
22 with a 75-day Lockout Notice.

23 With the Strike and Lockout Notices on the table,
24 either party could initiate a work stoppage on or after May
25 1. The parties continued to bargain, but still made no

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1 progress. Reasonably believing that a strike could be
2 imminent as the facts will show and unwilling to risk the
3 Union's striking on its own time table, the Company provided
4 Supplemental Lockout Notice to the Union on April 23rd,
5 informing the Union that the Company intended to lock out
6 employees on May 1, absent an agreement, and that is exactly
7 what the Company did.

8 On May 1, 2021, with the parties as far apart as they
9 had been for four months and the Union still not withdrawing
10 its strike notice, the Company locked out employees for the
11 first time in company history.

12 It locked out employees for two reasons. One, to
13 achieve its legitimate and critical bargaining objectives
14 and, two, because it could not risk the cost and dangers
15 that would come with the Union striking without sufficient
16 advanced notice.

17 Throughout the lockout, the parties continued to meet
18 for months and ultimately reached an agreement that was
19 ratified by the Union membership in February 2022.
20 Importantly, that agreement included all of the company's
21 must-haves, but the Union could have signed a similar
22 agreement at any time during bargaining, including before
23 the lockout.

24 The Union, as you've heard, claims this lockout was all
25 a ploy to somehow decertify a 650 member strong union that

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1 has been at Beaumont since the mid-1900's. That makes no
2 sense whatsoever.

3 First of all, if a company were to make a list of the
4 worst things to do to further employees decertifying a
5 union, atop that list would undoubtedly be to lock employees
6 out. Not only would that anger employees, but the Company
7 would have no access to those employees during that time.
8 Just as importantly, no employer would risk safety, cost,
9 reputation, relationships, government scrutiny, and the
10 overall uncertainty inherent in a lockout based on some pie
11 in the sky plan to decertify a well-established union.

12 Regardless, Your Honor, you have just heard the real
13 story. Decertification had nothing, absolutely nothing to
14 do with the Company's bargaining position or its decision to
15 lock out. The Company locked out employees in support of
16 its undisputed legitimate bargaining position and to avoid a
17 strike on the Union's terms.

18 It is undisputed that the Company, from the very
19 beginning of negotiations, was prepared and motivated to
20 reach a contract. The Company's lockout was 100 percent
21 consistent with that motive. The General Counsel will not
22 be able to proffer any evidence to the contrary because the
23 lockout, both its inception and its continuation, was never
24 motivated by decertification and as mentioned previously, it
25 is not alleged that the Employer bargained in bad faith.

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1 Finally, Your Honor, the General Counsel, we believe in
2 bad faith, is trying to overturn decades of Board and
3 Supreme Court precedent by arguing that the Company
4 unlawfully used temporary contractors during the lockout.
5 This is wrong. Controlling Board law and Supreme Court
6 precedent hold that employers have the right to operate
7 during a lockout. Prohibiting contractors would effectively
8 force most employers to shut down. In addition, even if
9 this precedent is overturned, there must be exceptions. A
10 refinery cannot be forced to shut down. It is simply too
11 dangerous.

12 In sum, the lockout was in support of the Company's
13 legitimate bargaining objectives and to avoid a strike on
14 the Union's terms. The Company, at all times, bargained to
15 reach agreement, which inherently contradicts the General
16 Counsel's fanciful claims of unlawful motive.

17 For these reasons, the General Counsel's Complaint
18 should be dismissed in its entirety. Thank you.

19 JUDGE WEDEKIND: Thank you. Very interesting history.
20 Thank you. It should be helpful when it comes to trying to
21 rule on evidentiary objections and things like that.
22 Appreciate it.

23 MS. SHIH: Thank you.

24 JUDGE WEDEKIND: Okay. You have some witnesses ready
25 to go?

1 MR. DOOLEY: Yes, Your Honor. If we're prepared to
2 call our first witness, we can call Mark Morgan.

3 JUDGE WEDEKIND: Hey, Mr. Morgan. And by the way, are
4 you ready to go with the stipulated or the joint exhibits or
5 not?

6 MR. DOOLEY: Oh, yeah, yeah. We can go ahead and put
7 those in.

8 JUDGE WEDEKIND: Go ahead. You can have a seat.
9 You want to offer them now?

10 MR. DOOLEY: Yeah. So just conferring with the other
11 parties, I think the plan is to offer all of them except for
12 the ones that were relevant to some of the other allegations
13 at this point. So we'll just exclude those and we can do
14 those verbally. I don't think we need to pull them out of
15 the binders or anything right now.

16 JUDGE WEDEKIND: Well, maybe you can reach that
17 agreement later and then -- do you know which ones they are?

18 MR. DOOLEY: Yeah.

19 JUDGE WEDEKIND: Okay. Go ahead.

20 MR. DOOLEY: So at this point, I would offer the
21 exhibits that were marked as Joint Exhibits 1 through 65 and
22 78 through 80, excluding 66 through 77, if everyone is good
23 with that?

24 **(Joint Exhibits 1 through 65 and 78 through 80, excluding 66**
25 **through 77, marked for identification.)**

1 MR. STANLEY: Excluding 66 to 77?

2 MR. DOOLEY: Um-hum.

3 JUDGE WEDEKIND: So we just take those out of our
4 binders and give them back to you. This is it right here,
5 right?

6 MR. DOOLEY: Yeah. Yeah, and I don't know if you
7 really need to pull them out...

8 JUDGE WEDEKIND: You don't need them out. Okay.
9 That's fine.

10 Any objection?

11 MR. STANLEY: No objection.

12 JUDGE WEDEKIND: Okay. They're received.

13 MR. FLYNN: No objection.

14 JUDGE WEDEKIND: All right. They're received. Thank
15 you.

16 **(Joint Exhibits 1 through 65 and 78 through 80, excluding 66**
17 **through 77, received into evidence.)**

18 All right. If you would, state your name for us and
19 spell it.

20 THE WITNESS: Mark Morgan. M-A-R-K, M-O-R-G-A-N.

21 JUDGE WEDEKIND: Okay. I wish my name was that simple.
22 Could you raise your right hand? I'll swear you in.

23 (Whereupon,

24 **MARK MORGAN**

25 having been sworn/affirmed, was called as a witness herein, and

1 was examined and testified, as follows:)

2 JUDGE WEDEKIND: Thank you very much. Counsel?

3 MR. DOOLEY: Yes, Your Honor. Could we go off the record
4 for just one minute?

5 JUDGE WEDEKIND: Sure.

6 MR. DOOLEY: I'm just going to send my exhibits that I'm
7 going to be using here...

8 JUDGE WEDEKIND: Sure.

9 MR. DOOLEY: ...out to everyone.

10 *[Off the record]*

11 DIRECT EXAMINATION

12 Q. BY MR. DOOLEY: All right. Now, Mr. Morgan, are you
13 currently employed?

14 A. THE WITNESS: Yes.

15 Q. Who is your employer?

16 A. ExxonMobil.

17 Q. And where are you employed with Exxon?

18 A. The Beaumont Refinery.

19 Q. How long have you been with the company?

20 A. Since November of '94.

21 Q. And what's your current job title?

22 A. Pipefitter.

23 Q. What do you do as a Pipefitter?

24 A. Pool pumps, RVs. Tighten up flanges, build pipe. Try to
25 keep to all pipe.

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1 Q. And are you affiliated with any union?

2 A. Yes, sir. USW 13243.

3 Q. What's your affiliation with the Union?

4 A. I'm currently the Chaplain.

5 Q. And what do you do as the Chaplain?

6 A. Hospital visits, funerals, prayer, whatever. Whatever the
7 membership needs.

8 Q. Prior to serving as Chaplain, have you held any other
9 positions or offices with the Union?

10 A. Yes, sir. I was the Chairman for the Workman's Committee
11 from 2014 until 2022 and then I was also a Steward before that.

12 Q. And as Chairman of the committee, what were your duties
13 and responsibilities?

14 A. We have a 13-person committee and I was the spokesperson
15 for that committee that bargained with the company.

16 Q. What exactly does the committee do?

17 A. Take everything from grievances to bargaining and try to
18 get solutions for them. Try to get solutions and continue
19 bargaining.

20 Q. Can you tell me a little bit about what the company does
21 at the Beaumont facility?

22 A. It's an oil refinery. So oil, gas, diesel. Also, we have
23 a blending and packaging plant that's finished product. Mobile
24 One. Other various products through there.

25 Q. And how many employees does the Union represent out there?

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1 A. Somewhere 6 to 650.

2 Q. Is there a current collective bargaining agreement in
3 place between the parties?

4 A. Yes.

5 Q. Can you tell me what the effective dates are on that
6 agreement?

7 A. March of '22 to February of 2027, I believe.

8 Q. And were you involved in negotiating that agreement?

9 A. Yes, sir.

10 Q. What was your involvement in the negotiations?

11 A. I was the Chair. I was the spokesperson for the Union's
12 side.

13 Q. And when did those negotiations begin?

14 A. Probably January of '21.

15 Q. Had you been involved in contract negotiations prior to
16 2021?

17 A. Yes, sir. 2015.

18 Q. Any other negotiations?

19 A. No, sir.

20 Q. Can you take a look at what's marked in your binder there
21 as Joint Exhibit 3? Can you tell me what that is?

22 A. That's the Union's 75-Day Strike Notice, dated February
23 15th, 2021.

24 Q. And can you turn to page there to Joint Exhibit 4? Can
25 you tell me what that is?

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1 A. That's the Union's 75-Day Lockout Notice. I mean, the
2 Company's 75-Day Lockout Notice.

3 Q. When the Union issues a 75-Day Strike Notice, does that
4 mean a strike is definitely going to occur?

5 A. No, sir.

6 Q. When you were previously involved in negotiations in 2015,
7 was there any strike notice issued?

8 A. Yes, sir.

9 Q. So what does it mean if the Union issues a strike notice?

10 A. It's to encourage bargaining. We -- every year since I've
11 been with the company, it's always at the table. The strike
12 notice has always been at the table.

13 Q. Is there any kind of vote required to issue that notice?

14 A. Yes, sir.

15 Q. And what exactly was that vote authorizing?

16 A. Authorizing us to use the language in the strike notice.

17 Q. Okay, but not to actually go on strike at that point?

18 A. Correct.

19 MR. DOOLEY: Your Honor, may I approach the witness with
20 what's been marked as General Counsel's Exhibit 2?

21 **(General Counsel's Exhibit 2, marked for identification.)**

22 JUDGE WEDEKIND: Yes, and thank you for asking, but you
23 don't need to do so in the future.

24 Q. BY MR. DOOLEY: Can you take a look through that document?
25 It's three pages and once you've had a chance to look at it,

1 tell me what we're looking at.

2 A. THE WITNESS: On Tuesday, February 16th, I texted Blake
3 Berend, asking what it would take to get an extension.

4 Q. And what did you mean by an extension there?

5 A. To continue on with the contract we have and keep
6 bargaining without a work stoppage.

7 Q. You previously mentioned that there was a strike notice
8 issued in 2015; was there also a lockout notice issued that
9 year?

10 A. Yes, sir.

11 Q. Was there a work stoppage in 2015?

12 A. No, sir.

13 Q. And how was a work stoppage avoided?

14 A. We presented the Company with a Rolling 24.

15 Q. Can you explain what you mean by Rolling 24?

16 A. We were going to continue bargaining until we got a
17 deal done, 24 hours at a time.

18 Q. Did you receive any response to the text messages
19 requesting an extension that we're looking at there?

20 A. Not on Tuesday. I sent it again on Wednesday. The
21 same exact text and then on Thursday, I got a response.

22 Hey, Mark. Just wanted to make sure you saw my e-mail
23 response and I attached an updated offer. We plan to send
24 the details of the changes to all employees tomorrow.

25 MR. DOOLEY: Your Honor, I would offer General

1 Counsel's Exhibit 2.

2 JUDGE WEDEKIND: Any objection?

3 MR. FLYNN: No objection.

4 MR. SPITZ: Is this -- without going through Voir
5 Diring the witness on it, I mean, is this -- are these just
6 taken off of the text thread or are these -- you know, if I
7 look at your text thread, would it go straight from February
8 16th, this text to the 17th or is...

9 THE WITNESS: Yes, sir.

10 MR. SPITZ: ...there anything in between? All right.
11 No objection.

12 JUDGE WEDEKIND: All right. It's received.

13 **(General Counsel's Exhibit 2, received into evidence.)**

14 Do we have all the other ones in, Dave? We have GC 1
15 in and we have the Joint Exhibits in?

16 THE COURT REPORTER: Yes.

17 JUDGE WEDEKIND: Okay.

18 MR. DOOLEY: All right, Your Honor. I'm approaching
19 the witness with another document if that's okay.

20 JUDGE WEDEKIND: Sure.

21 Q. BY MR. DOOLEY: I've just handed you what's been marked
22 for identification as General Counsel's Exhibit 3.

23 **(General Counsel's Exhibit 3, marked for identification.)**

24 After you've got the chance to look that over, can you
25 tell me what that is?

1 A. THE WITNESS: Yeah. This is a proposed one-year
2 extension made from the workman's committee to the company
3 to extend the current contract for one year and continue
4 bargaining.

5 Q. What was the rationale behind that proposal?

6 A. To avoid any work stoppage.

7 MR. DOOLEY: Your Honor, I would offer General
8 Counsel's Exhibit 3.

9 MR. SPITZ: No objection.

10 MR. FLYNN: No objection.

11 JUDGE WEDEKIND: It's received.

12 **(General Counsel's Exhibit 3, received into evidence.)**

13 Q. BY MR. DOOLEY: Mr. Morgan, at any point between
14 February 15th and April 20th, the date of the proposal that
15 we just looked at, did the Union communicate to the Company
16 that the strike was planned?

17 A. THE WITNESS: No, sir.

18 MR. DOOLEY: All right. Your Honor, at this point, I'm
19 going to approach with what's been marked for identification
20 as General Counsel's Exhibit 4.

21 **(General Counsel's Exhibit 4, marked for identification.)**

22 Q. BY MR. DOOLEY: Mr. Morgan, after you've had a chance
23 to look that over, can you tell me what that is?

24 A. THE WITNESS: This is the Company's 75-Day Lockout
25 Notice saying they're going to enforce it on May 1st.

1 Q. And when did you receive that document?

2 A. April 23rd.

3 Q. Where did you receive it?

4 A. At our Union Hall.

5 Q. And what were you doing at the Union Hall when you
6 received it?

7 A. Having a bargaining meeting.

8 MR. DOOLEY: Your Honor, I would offer General
9 Counsel's Exhibit 4.

10 MR. SPITZ: No objection.

11 MR. FLYNN: No objection.

12 JUDGE WEDEKIND: It's received.

13 **(General Counsel's Exhibit 4, received into evidence.)**

14 Q. BY MR. DOOLEY: That bargaining meeting that you just
15 mentioned on April 23rd, during that meeting, do you recall
16 any conversations about a potential work stoppage?

17 A. THE WITNESS: Yes, sir.

18 Q. And who was involved in that conversation?

19 A. Myself and Blake Berend.

20 Q. And where did that conversation take place?

21 A. At the Union Hall.

22 Q. And do you remember about what time it would've been?

23 A. No, sir, I don't.

24 Q. What was said during that conversation?

25 A. I shared with him the -- somewhere in the fact that the

1 stonewalling -- I asked him did he want to work stoppage and
2 I believe he told me he didn't and I said me neither.
3 Pretty quick after that, they took a caucus, went outside in
4 our parking lot at our Union Hall, came back a couple
5 minutes later, and then handed us that document.

6 Q. So did it appear that this document had been prepared
7 in advance of that conversation?

8 A. Yes, sir.

9 Q. Was anybody else present for that conversation?

10 A. The whole workman's committee and the Company.

11 Q. And who would've been on the workman's committee at
12 that point in time?

13 A. There's 13. I mean, the whole 13 committee, 13-member
14 committee was there.

15 Q. Okay. It's all right if you can't recall everybody
16 individually. What happened after the Union received that
17 notice? Were employees locked out?

18 A. Yes, sir.

19 Q. And when did that occur?

20 A. Around 10:00, I believe. Around 10:00 the day before.
21 10 p.m. the night before May 1st.

22 Q. So about 10 p.m. on -- would that have been April 30th?

23 A. Correct.

24 Q. And how long did that lockout last?

25 A. Roughly ten months.

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1 Q. During the lockout, did the Company continue operating
2 the plant?

3 A. Yes, sir.

4 Q. Do you know how?

5 A. Contract workers and supervision.

6 Q. During the lockout, did the Company communicate with
7 employees?

8 A. Yes, sir.

9 Q. Are you familiar with something called an EIB or
10 Employee Information Bulletin?

11 A. Yes, sir.

12 Q. Can you tell me what that is?

13 A. Employee -- Exxon employee information bulletin. It's
14 a document they use to communicate to all of their
15 employees, I believe.

16 Q. If you can just flip in your binder there to Joint
17 Exhibit 5, is this an example of an Employee Information
18 Bulletin?

19 A. Yes, sir. It looks like it.

20 Q. To your knowledge, did the Company also send out
21 information related to the decertification effort?

22 A. Yes, sir.

23 Q. If you want to flip through your binder there to Joint
24 Exhibit 40. Is that an example of communication related to
25 the decertification from the Company?

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1 A. Yes, sir. It's titled Decertification Update.

2 MR. DOOLEY: No further questions at this time, Your
3 Honor.

4 JUDGE WEDEKIND: Any questions from the Union?

5 DIRECT EXAMINATION

6 Q. BY MR. FLYNN: Yes, Your Honor.

7 Mr. Morgan, when the membership voted for what you
8 called a strike authorization, do you recall when that took
9 place approximately?

10 A. THE WITNESS: It had to have been late November.
11 Middle to late November, I believe. Early December.

12 Q. November December of 2020?

13 A. 2020, correct.

14 Q. And was it a vote to strike at that time or at some
15 certain time or what was the vote for?

16 A. Just to offer strike notice.

17 Q. Was the committee given any power in that vote or was
18 that, that did not come up?

19 A. I don't believe that came up.

20 MR. FLYNN: Okay. That's all I had, Judge.

21 JUDGE WEDEKIND: Cross?

22 MR. SPITZ: Yeah. Has this witness provided an
23 Affidavit? So I have a list of 21 charges filed between
24 March 2021 and January of 2022 and we would request any
25 Affidavits from any of those cases that touches upon

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1 negotiations, allegations of more than ministerial aid,
2 allegations regarding bad faith bargaining, the lockout, or
3 any other matter contained in the Consolidated Complaint or
4 referenced in the Consolidated Complaint.

5 MR. DOOLY: So when I pulled our four Affidavits
6 related directly to these cases and one Affidavit that's not
7 directly related, but it's referred to in one of the
8 Affidavits from these cases. Those are the ones I'm
9 prepared to give you right now. Can you tell me why you
10 want all these Affidavits related to earlier cases?

11 MR. SPITZ: Yeah because under Jencks, it's not the
12 case, it's the subject matter. So to the extent that any of
13 these 21 charges investigated anything involving the subject
14 matter during the timeframe we're talking about here, we
15 believe that we're entitled to those Affidavits. In fact,
16 I've had the Board in response to a Jencks request produce
17 Affidavits from EEOC proceedings, OSHA proceeding, and other
18 related cases. So other Board cases are obviously fair
19 game. The matters under investigation in the other cases
20 were similar. The facts were similar. The timeframe was
21 the same. So if the General Counsel has not reviewed each
22 one of these 21 files in order to ascertain whether there
23 are relevant Affidavits, we'd request that we take a break
24 and let the General Counsel do so, and I can certainly read
25 these cases into the record.

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1 MR. DOOLEY: If you just want to provide the list to
2 me, I can look at it and see if there's anything else that I
3 didn't already flag for you. But yeah, I will need some
4 time for that, Your Honor.

5 JUDGE WEDEKIND: All right. Let's provide Respondent
6 with what you have. You did that already?

7 MR. SPITZ: Thank you.

8 MR. DOOLEY: The longest one there is the one that's
9 not directly related. It's related to the Savings Plan
10 cases, but it's referenced so I figured you guys would ask
11 for it.

12 JUDGE WEDEKIND: Okay.

13 MR. SPITZ: Thank you.

14 JUDGE WEDEKIND: So and you've gotten the list now?

15 MR. DOOLEY: Yeah.

16 JUDGE WEDEKIND: Of cases. So why don't you take --
17 how much time do you want to start with to review those
18 statements?

19 *[Brief pause]*

20 Do you want to start with 15 minutes?

21 MR. SPITZ: Since I'm going to -- one person is going
22 to be doing the cross. So I think 20, you know...

23 JUDGE WEDEKIND: All right. So...

24 MR. SPITZ: Assuming there are no more Affidavits
25 coming.

1 JUDGE WEDEKIND: Right. Let's just start with 20. In
2 the meantime, Mr. Dooley, you'll start looking at those
3 other cases and then we'll address any issues we have. Off
4 the record.

5 *[Off the record]*

6 JUDGE WEDEKIND: All right. So just to -- for the
7 record, how many extra Affidavits did you provide? Just the
8 one that I reviewed or did you provide any additional ones?

9 MR. DOOLEY: Just the one that you reviewed and then...

10 JUDGE WEDEKIND: Okay. All right. There were two
11 others that...

12 MR. DOOLEY: ...that we gave to you were the only other
13 two we found.

14 JUDGE WEDEKIND: Okay. So I reviewed three Affidavits.
15 I found that portions of one were relevant, but the other
16 two were not and so you've had a chance to review the one
17 that you got in addition to the -- how many did you get
18 initially? Five?

19 MR. DOOLEY: Five.

20 JUDGE WEDEKIND: Five.

21 MR. SPITZ: We have, Your Honor.

22 JUDGE WEDEKIND: Okay, great. Ready to start cross?

23 MR. SPITZ: Yes, Your Honor.

24 JUDGE WEDEKIND: Okay. Go right ahead.

25 CROSS EXAMINATION

1 Q. BY MR. SPITZ: All right. Mr. Morgan, we met
2 previously. My name is Jon Spitz. I represent ExxonMobil.
3 I have some questions for you. If you don't understand any,
4 please let me know and I'll repeat them. Okay?

5 A. THE WITNESS: Yes, sir.

6 Q. Okay. Now, I believe you mentioned that you were on
7 the Union bargaining committee in 2015?

8 A. Yes, sir.

9 Q. And during that bargaining, the Union opposed getting
10 off pattern, correct?

11 A. Yes, sir.

12 Q. And one of the reasons that the Union opposed getting
13 off pattern was it explained to its members that it thought
14 it would put the Union at risk in Beaumont that the Company
15 would have more leverage in the future, correct?

16 A. Yes, sir.

17 Q. But the Company in 2015 said it was trying to position
18 the site for future investment, correct?

19 A. Correct.

20 Q. And do you recall that there were 15 strikes during the
21 2015 pattern negotiations?

22 A. I don't know how many, but there was a national strike.

23 Q. By the USW?

24 A. Um-hum.

25 JUDGE WEDEKIND: What year?

1 THE WITNESS: 2015.

2 Q. BY MR. SPITZ: And that was the year that the parties
3 bargained for about four or four and a half months after the
4 contract expired, correct?

5 A. THE WITNESS: Yeah. I believe into June. Yes.

6 Q. And do you recall seeing all of the -- you heard the
7 phrase EMCO today?

8 A. Yes, sir.

9 Q. Have you heard that before?

10 A. Yes, sir.

11 Q. And so you've saw all the EMCO preparation in 2015?

12 A. Yes, sir.

13 Q. Including a ton of shadowing on the units, correct?

14 A. Yes, sir.

15 Q. So in 2015, the contract expired on January 31,
16 correct?

17 A. Correct.

18 Q. And the Union gave strike notice at that time?

19 A. Yes, sir.

20 Q. And so the Company operated under the threat of a
21 strike until I think it was actually June 26th when the new
22 contract was signed?

23 A. Yeah. Something like that. Yes, sir.

24 Q. Okay. So let's roll forward to 2021. So the Union
25 took a strike vote among its members on December 3rd; is that

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1 right?

2 A. That sounds right.

3 Q. And now, I believe you testified before that the vote
4 was simply so that the Union could send a letter to the
5 Company with strike notice, correct?

6 A. Correct.

7 Q. So is it your testimony then that the Union did not
8 authorize a strike at that time? Or the members, I should
9 say.

10 A. The membership voted to give us strike authority. Yes.

11 Q. Okay. So it was a strike authorization, though,
12 correct?

13 A. Correct.

14 Q. And that meant that the bargaining committee could make
15 a decision at any time to strike once the contract expired,
16 correct?

17 A. Technically correct.

18 Q. So I'm going to mark -- I'm going to hand you what's
19 been marked -- I am going to hand you what's been marked as
20 Company Exhibit 1. I've got one for the Judge.

21 **(Respondent's Exhibit 1, marked for identification.)**

22 JUDGE WEDEKIND: Can we call it Respondent? R1?

23 MR. SPITZ: Respondent?

24 JUDGE WEDEKIND: Yeah. Thanks.

25 MR. SPITZ: R-1.

1 MR. DOOLEY: Is this the same one you...

2 MR. SPITZ: Yeah, it is.

3 THE WITNESS: Thank you, sir.

4 Q. BY MR. SPITZ: Do you recognize that?

5 A. THE WITNESS: Yes, sir.

6 Q. All right, and that's the announcement of the strike
7 authorization vote?

8 A. Correct.

9 Q. And that's dated December 3rd or that the vote -- it
10 announced...

11 A. Correct.

12 Q. ...the vote for December 3rd.

13 A. Correct.

14 Q. And subsequent to this, the vote, the Union
15 communicated to the members that the vote had passed
16 overwhelmingly, correct?

17 A. Correct.

18 Q. And thanked the members for their vote, correct?

19 A. Correct.

20 Q. All right, and how was that distributed to the members?
21 That notice. Was that e-mailed, posted?

22 A. I'm trying to remember what was in place. If MailChimp
23 was in place or if it was posted on Facebook or if it was
24 posted on the wall. It was probably all three. Probably
25 all three I'd assume.

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1 Q. Okay. So you did distribute that to the members?

2 A. Correct.

3 MR. SPITZ: All right. The Employer moves for
4 Respondent 1.

5 JUDGE WEDEKIND: Any objection?

6 MR. DOOLEY: No objection, Your Honor.

7 MR. FLYNN: No objection.

8 JUDGE WEDEKIND: It's received.

9 **(Respondent's Exhibit 1, received into evidence.)**

10 Q. BY MR. SPITZ: And by the way, I know I moved off of
11 the 2015 negotiations, but the Union didn't vote on the
12 Company's proposal until was it June of 2015?

13 A. THE WITNESS: I would assume.

14 Q. I mean, that's when the ratification...

15 A. That's right...

16 Q. So the Union refused to take any of the Company's
17 offers to vote prior to June?

18 A. I don't recall if we took any that year or not.

19 Q. Okay.

20 A. How many -- if any.

21 Q. Do you recall the Company getting frustrated that the
22 Union wasn't voting on any of the Company's offers?

23 A. In '15?

24 Q. Yes.

25 A. I don't recall.

1 Q. Do you recall the Company distributing EIBs in 2015?

2 A. Yes, sir.

3 Q. And do you recall the Company urging members to vote to
4 speak to the Union about voting on the Company's proposals?

5 A. I didn't follow any of the EIBs. I don't follow any
6 EIBs. I don't follow Facebook. I don't follow any of that
7 stuff, man. I didn't follow it.

8 Q. All right. Now, let's talk about in March of 2021, you
9 received an e-mail from Mr. Sanderson; do you recall that
10 regarding the decertification?

11 A. Yeah, I guess that's the dates. Yeah. I remember
12 getting one.

13 Q. And did you see that -- did you receive that e-mail
14 directly from Mr. Sanderson or did you see it posted on the
15 decertified BMRF website?

16 A. I believe it came to my company e-mail.

17 Q. Were you aware of that decertified BMRF website?

18 A. I don't follow any social media, man. I do not.

19 JUDGE WEDEKIND: But that's not -- that didn't answer
20 the question. Were you aware of it at all?

21 THE WITNESS: I heard rumor of it. I never looked at
22 it. I never looked at that site.

23 JUDGE WEDEKIND: Okay.

24 Q. BY MR. SPITZ: But you do use Facebook, though?

25 A. THE WITNESS: I do.

1 Q. But in any event, you received the e-mail from Mr.
2 Sanderson in, on March 9th of 2021; does that ring a bell?

3 A. I'm guessing your dates are right.

4 Q. All right. It sounds about right?

5 A. Sounds close.

6 Q. Was that e-mail the first time that you learned of the
7 decertification effort by Mr. Sanderson?

8 A. I don't remember.

9 Q. Could it have been...

10 A. I don't remember.

11 Q. Was it about that time?

12 A. I don't remember.

13 Q. Okay. Now, do you recall telling the Board Agent who
14 took your Affidavit, Zachary Long, Mr. Long, that you did
15 not have direct knowledge of any employer, manager, or
16 supervisor providing employee Brian Sanderson with any
17 decertification materials? Do you recall telling...

18 A. I believe so.

19 Q. All right, and I'm going to hand you or show you this
20 Affidavit and would you agree, sir, that other than that
21 paragraph, paragraph number 11 mentioning that you were
22 unaware of any other assistance that the Employer gave at
23 the first mention of or the earliest mention,
24 chronologically, is the March 3rd mention?

25 A. Okay.

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1 Q. Would you agree with that?

2 A. Sure.

3 Q. Okay.

4 MR. FLYNN: Jonathan, can we get the signing date of
5 that Affidavit so we...

6 MR. SPITZ: Yeah. The Affidavit -- I apologize, guys.
7 It is signed on June 3rd. Sworn before me on telephone on
8 May 3rd. So May 3rd typed date by Mr. Long. June 3rd signed.

9 JUDGE WEDEKIND: What year?

10 MR. SPITZ: Of 2021.

11 JUDGE WEDEKIND: Thank you.

12 Q. BY MR. SPITZ: All right. Now, negotiations started on
13 January 11th, correct?

14 A. THE WITNESS: Correct.

15 Q. All right. There was certainly no talk of decert
16 before January 11th that you recall?

17 A. That I recall. Correct.

18 Q. Okay. Do you recall Mr. Berend giving an opening
19 statement at the negotiation session on January 11th?

20 A. Yeah, I believe he did.

21 Q. And do you recall making an information request asking
22 that Mr. Berend send you a copy of that opening statement?

23 A. No, I don't remember.

24 Q. This might refresh your memory.

25 A. Thank you.

1 Q. If you take a minute to look through this.

2 **(Respondent's Exhibit 2, marked for identification.)**

3 And you don't have to read the whole thing. I'm just
4 asking you to confirm that Ms. Ealy e-mailed you a response
5 to an information request providing Mr. Berend's opening
6 statement?

7 A. It looks correct.

8 Q. And do you recall receiving this?

9 A. Barely. Vaguely.

10 MR. SPITZ: Okay. We move Respondent 2.

11 MR. FLYNN: No objection.

12 MR. DOOLEY: No objection, Your Honor.

13 JUDGE WEDEKIND: It's received.

14 **(Respondent's Exhibit 2, received into evidence.)**

15 Q. BY MR. SPITZ: Now, having glanced through that, Mr.
16 Morgan, do you recall Mr. Berend reading this statement
17 verbatim at that first meeting on January 11th?

18 A. THE WITNESS: Yes, sir.

19 Q. And he talked about the devastating impact of COVID on
20 the Company; do you recall that?

21 A. Yes, sir.

22 Q. That ExxonMobil lost \$20 billion in 2020; do you recall
23 that?

24 A. I recall we reported a loss.

25 Q. And of course, you knew that the Company had suspended

1 the 401K match, correct?

2 A. Yes, sir.

3 Q. And laid off 2,000 people in the United States?

4 A. Yes, sir. 14,000.

5 Q. And 14,000 people worldwide, do you recall them sharing
6 that?

7 A. Yes, sir.

8 Q. And he said that the Company's proposals would focus on
9 improving overall competitiveness of the Beaumont Refinery
10 and the blending and packaging plant, correct?

11 A. Correct.

12 Q. And he said that the Company would quote aggressively
13 pursue flexibility in many ways, including how we manage,
14 operate, staff, and run the refinery and these operations,
15 correct?

16 A. Correct.

17 Q. And you soon learned through the Company's proposals
18 that one of the proposals, at least in the Company's view
19 about improving competitiveness and flexibility was to
20 eliminate the A operator position, correct?

21 A. Yes, sir.

22 Q. And the Company proposed eliminating the A operator
23 throughout the 2021 negotiations, correct?

24 A. Yes, sir.

25 Q. And the Union adamantly opposed that, did it not?

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1 A. Correct.

2 Q. In fact, the Company had proposed eliminating the A
3 operator position during midterm bargaining as well, didn't
4 it?

5 A. Yeah.

6 Q. And the Union adamantly opposed that as well, correct?

7 A. Correct.

8 Q. And the Union never changed its position during
9 bargaining during 2021, did it?

10 A. I don't believe that to be a true statement.

11 Q. I'm sorry?

12 A. I don't believe that to be a true statement.

13 Q. All right. Well, I mean, explain then.

14 A. I believe we made an offer that did away with the A.

15 Q. Well, I believe your offer was to make everybody an A,
16 correct?

17 A. It would do away with the A position.

18 Q. The Company wanted to eliminate the A, correct?

19 A. And that did that. Our proposal would've done exactly
20 that.

21 Q. All right. Did you sign a tentative agreement with the
22 Company at any point?

23 A. We asked for a tentative.

24 Q. When did the Union make its proposal?

25 A. I don't know. I don't have the dates in front of me.

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- 1 Q. It wasn't in January, was it?
- 2 A. I don't have the dates in front of me.
- 3 Q. Was it in January?
- 4 A. I...
- 5 Q. You don't recall at what point in negotiations? It was
- 6 ten months.
- 7 A. A long ten months.
- 8 Q. And so in January, did the Union agree with the
- 9 Company's proposal?
- 10 A. Probably not January.
- 11 Q. February?
- 12 A. As it relates to A, I don't remember when we dropped
- 13 the A, when we dropped the A position off.
- 14 Q. Was it before the May 1 lockout?
- 15 A. I doubt it.
- 16 Q. Now, you also learned that one of the ways the Company
- 17 was proposing to improve profitability and flexibility was
- 18 to eliminate seniority job bidding, correct?
- 19 A. Yes.
- 20 Q. And the Union was proposing to make job bidding 100
- 21 percent by seniority, correct?
- 22 A. Correct.
- 23 Q. And while the Union changed its offer, by May 1, the
- 24 Union had not agreed to eliminate seniority bidding,
- 25 correct?

1 A. That's probably correct.

2 Q. Well, in fact, the Union never agreed to eliminate
3 seniority bidding. The members just ratified the Company's
4 proposal, correct?

5 A. I would have to look at it. I really would to be
6 honest with you.

7 Q. So you don't recall?

8 A. I don't recall.

9 Q. All right. Do you recall that the Union refused to
10 sign off on any tentative agreements at all during the
11 course of bargaining?

12 A. I remember in the very beginning, we wouldn't sign off
13 on NOBP language.

14 Q. All right. Do you recall signing any tentative
15 agreements in January?

16 A. No. The only ones that were on the table were the NOBP
17 ones that's tentative that the Company wanted to sign.

18 Q. Okay. Well, the Company proposed a six-year term. I'm
19 sorry. A three-year term, correct? In January?

20 A. Correct.

21 Q. All right. The Union would not sign a tentative
22 agreement on that either, would it?

23 A. Because that's also an NOBP.

24 Q. Do you recall telling Mr. Berend at the table that the
25 International had directed the local not to sign off on any

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- 1 tentative agreements at the table?
- 2 A. Anything related to NOBP was theirs.
- 3 Q. And that would include term?
- 4 A. That's correct.
- 5 Q. All right. Would that include A operator?
- 6 A. No.
- 7 Q. Okay, but you didn't sign any tentative agreements on A
- 8 operator in January?
- 9 A. No.
- 10 Q. Or anytime before the lockout started?
- 11 A. No.
- 12 Q. Do you -- and you didn't -- the same thing with job
- 13 bidding, correct?
- 14 A. There's zero tentative agreements were signed at all.
- 15 When y'all requested them and we requested them. Either
- 16 way.
- 17 Q. All right. You -- and would you agree, sir, that the
- 18 Union had not agreed to eliminate seniority bidding by May
- 19 1, correct?
- 20 A. You're probably correct.
- 21 Q. Do you recall the Company proposing that all job
- 22 progressions be 54 months?
- 23 A. Yes, sir.
- 24 Q. And the Union didn't agree to that before?
- 25 A. No.

1 Q. Before May 1st, correct?

2 A. Correct.

3 Q. All right, but you can't recall when the Union agreed
4 on any of these, can you?

5 A. No, I cannot.

6 Q. And going back to Mr. Berend's opening statement, he
7 said quote we cannot approach this as a normal bargaining
8 issue where we tackle a minor issue or two and expect to
9 renew what's been done in years past simply because it's
10 considered pattern, correct?

11 A. I think I remember that. Yes.

12 Q. All right, and he said you'll see in our proposals that
13 we are challenging many concepts to which the Union may take
14 exception, but which we are convinced must be addressed to
15 ensure we can be here for another 100 years; do you recall
16 that?

17 A. Yes.

18 Q. All right, and ultimately, as I said, you learned that
19 that was the A operator position, the 54 months eliminating
20 seniority bidding, correct?

21 A. Correct.

22 Q. All right, and the Company insisted upon those things
23 throughout the entire course of bargaining, correct?

24 A. Correct.

25 Q. Never wavered, did it?

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1 A. No.

2 Q. Do you recall Mr. Berend saying that the Company would
3 give serious consideration to any Union proposal, but that
4 any Union proposal that increased the cost to the Company or
5 restricted management's ability to run the business would
6 not be agreed to; do you recall that?

7 A. Yes.

8 Q. And do you recall him saying we simply cannot enter
9 into any agreement that puts any new burden or restriction
10 on our business or removes flexibility from management
11 running the operations; do you recall that?

12 A. Yes.

13 Q. All right, and of course, all of that was said on
14 January 11th, long before anybody said the word
15 decertification, correct?

16 A. Again, I'm assuming. I don't know when the decert
17 kicked off.

18 Q. Well, do you recall that Mr. Sanderson, when he kicked
19 off the decert, it was all about pressuring the Union to
20 vote on the Company's proposal?

21 A. I believe that was the first e-mail.

22 Q. All right, and do you recall that in the month of
23 January, the Company did not communicate with employees at
24 all upon the...

25 A. I don't know that to be true or false.

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1 Q. All right. So you didn't -- so even though you were
2 the Chairman of the Union's committee, you didn't look at
3 any of the Company's EIBs?

4 A. No.

5 Q. And even though an employee had set up a website
6 dedicated to decertifying your Union, you never looked at
7 that website?

8 A. Never looked at it. Not one time.

9 Q. All right. Now, going back to the negotiation. The
10 Union declined to make an opening statement; do you recall
11 that?

12 A. Yes, sir.

13 Q. All right, and it never did make an opening statement,
14 did it?

15 A. I don't believe so.

16 Q. Why not?

17 A. I don't recall.

18 Q. Didn't you want the Company to know the Union's goals
19 in negotiations?

20 A. I think it was pretty obvious.

21 Q. How so?

22 A. We put them on the table.

23 Q. All right. For example, requiring that all bidding be
24 done by seniority while the Company was proposing to
25 eliminate seniority as a consideration altogether?

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1 A. Um-hum.

2 Q. Correct?

3 A. Yes, sir.

4 Q. Now, on -- you testified that on April 20, you sent the
5 Company -- we'll go to that in a second.

6 General Counsel Exhibit 2 were your text messages with
7 Mr. Berend.

8 A. Correct.

9 Q. All right. You recall that? That was December --
10 February 16 and 17.

11 A. Yeah.

12 Q. All right.

13 A. Yes, sir.

14 Q. And that was in the middle of the ice storm, correct?

15 A. I do not know.

16 Q. All right. So in your Affidavit dated June 3rd, you
17 talked about the ice storm. Do you remember that being in
18 your Affidavit?

19 A. No, I do not.

20 Q. All right. Was the ice storm a significant event?

21 A. Yes, sir.

22 Q. All right. In fact, employees weren't able to come to
23 work for two days?

24 A. Correct.

25 Q. All right. There were a lot of operational issues

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1 caused by the ice storm?

2 A. I'm sure.

3 MR. DOOLEY: Your Honor, I'm going to object to
4 relevance.

5 MR. SPITZ: Well, you just put into evidence a text
6 message and it seems to insinuate that there was a bad faith
7 reason why the Company didn't respond to it and I'm just
8 going to ask the witness about why.

9 JUDGE WEDEKIND: What was the purpose of GC 2?

10 MR. DOOLEY: GC 2?

11 JUDGE WEDEKIND: Yes. They're questioning him about GC
12 2.

13 MR. DOOLEY: Yeah. That's one of the instances in
14 which the Union had requested an extension to avoid a work
15 stoppage.

16 JUDGE WEDEKIND: Okay. As evidence that there was no
17 actual threat of a strike; is that why you put that in?

18 MR. DOOLEY: Correct.

19 JUDGE WEDEKIND: Okay, and so now, you want to...

20 MR. SPITZ: Well, I mean, I think there's something
21 about, you know, the -- I just want to establish why he
22 didn't respond immediately and then I'll get into some other
23 issues.

24 JUDGE WEDEKIND: Is that an issue about him responding?
25 I didn't really catch that. Is that -- did you put that in

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1 to show...

2 MR. DOOLEY: No, no. The only point I was trying to
3 make there is that the Employer -- the Union requested an
4 extension several times. The Company never agreed to it. I
5 don't care if he immediately responded to that text message
6 or not. They never agreed to an extension.

7 JUDGE WEDEKIND: Well, you -- go ahead. You wanted
8 something about why they didn't respond, go ahead.

9 MR. SPITZ: The testimony was that he reached out
10 twice.

11 JUDGE WEDEKIND: That's fine. Go ahead.

12 Q. BY MR. SPITZ: So your Affidavit says that on February
13 15 and 16, employees were unable to come to work due to the
14 freezing weather; do you recall that?

15 A. THE WITNESS: Yes, sir. Yeah.

16 Q. So the ice storm occurred literally on the same day on
17 February 15 when you sent your strike notice, correct? Do
18 you recall that?

19 A. I don't recall it being on top of each other if I'm
20 being honest with you.

21 Q. All right, but in any event, you sent the strike notice
22 on February 15th. That you recall, right?

23 A. Correct.

24 Q. Okay, and it's -- I believe you testified that you sent
25 the strike notice because you wanted to encourage

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1 bargaining; do you recall testifying to that?

2 A. A little bit. Yes, sir.

3 Q. All right.

4 A. I do.

5 Q. Don't you mean because you wanted to put pressure on
6 the Company?

7 A. No. Their last and final offer expired on the same
8 day.

9 Q. Well, I mean, how does threatening to strike encourage
10 bargaining?

11 A. Because their last and final expired and we needed to
12 get together and get this deal done.

13 Q. Okay, but the strike notice threatened to strike.

14 A. And it -- the only reason it didn't get put in in
15 January, at the end of it when we left the hotel, me and
16 Blake talked. As long as we kept having conversations and
17 bargaining, we wasn't going to implement it. But once that
18 -- once their contract expired, their offer expired, we
19 implemented a strike notice.

20 Q. All right. The contract expired on January 31st, right?

21 A. Correct.

22 Q. All right. So after the Company issued a lockout
23 notice, that's when you texted Mr. Berend about trying to
24 get an extension, right?

25 A. That sounds right. Yeah.

1 Q. Now, do you recall Mr. Berend saying in 2015, 24 hours
2 didn't work for us?

3 A. Correct.

4 Q. He said that was unacceptable, correct?

5 A. Correct.

6 Q. And do you recall -- so you proposed 24 hours as an
7 extension. Rolling 24s, right?

8 A. I don't remember proposing 24 rolling extensions.

9 Q. Okay. You could have, you just don't recall?

10 A. I don't recall making a 24-hour request.

11 Q. Okay, but you do recall Mr. Berend telling you 24 hours
12 does the Company no good?

13 A. Correct.

14 Q. All right. Because of the experience in 2015?

15 A. Correct.

16 Q. And he specifically said it didn't work for us in 2015,
17 right?

18 A. Correct.

19 Q. Do you recall proposing a one-year extension?

20 A. Yes, sir.

21 Q. All right, and that was on April 20, 2021, correct?

22 A. That sounds right.

23 Q. All right. That's General Counsel's Exhibit 3. Do you
24 have that in front of you? Is it in the book?

25 MR. DOOLEY: Not in the binder. Mr. Morgan, it would

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1 be one of the ones I handed you.

2 Q. BY MR. SPITZ: Okay. So you proposed a one-year
3 extension and you offered to continue talking about a Pilot
4 TOP. The Pilot process signup. Those were issues pushed by
5 the Union, right?

6 A. THE WITNESS: Correct.

7 Q. Okay, and you proposed continue training up through the
8 A operator position, correct?

9 A. Correct.

10 Q. All right. The Company was proposing eliminating the A
11 operator position, correct?

12 A. Correct.

13 Q. All right. You didn't propose anything regarding a 54-
14 month progression, did you?

15 A. Negative. I did not.

16 Q. You didn't propose anything about eliminating seniority
17 bidding or to continue discussing that, did you?

18 A. No.

19 Q. You didn't withdraw your strike notice, did you?

20 A. No.

21 Q. And by proposing a one-year extension to January 31st,
22 2022, would you not have put Beaumont right back on the
23 pattern?

24 A. I don't remember the pattern dates. I don't remember
25 the pattern dates.

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1 Q. You don't remember -- you don't recall Mr. Berend
2 saying we paid \$5,000 per employee in 2015 to get a
3 ratification vote to get off pattern, we are not going to
4 agree to a one-year extension that will get us right back on
5 pattern?

6 A. No, but what I do remember is developing roles and
7 responsibilities you skipped out of, which is getting rid of
8 the A spot.

9 Q. I don't know. I'm looking at the fourth bullet...

10 A. I know you don't know. You missed the bullet.

11 Q. And it says continue training up through the A operator
12 position, right?

13 A. The position, but developing roles and responsibilities
14 for the process tech is what the new A operator was going to
15 be called is something we proposed on the extension. Get
16 rid of the A operator.

17 Q. So you proposed continuing bargaining for a year,
18 right?

19 A. Correct.

20 Q. Okay, and Mr. Berend said we are not going to extend
21 the CBA by a year and get right back on pattern, didn't he?

22 A. I don't remember that.

23 Q. All right.

24 A. But I do see we tried to get tentative agreements
25 again.

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1 Q. Well, you're proposing talking about things?

2 A. Creating tentative agreements. That's correct.

3 Q. All right. So you're proposing to create a tentative
4 agreement list to be added as we agreed to all future items,
5 right?

6 A. Correct.

7 Q. All right, but at that point, nothing had been
8 tentatively agreed to?

9 A. Correct. But again, we're asking for it.

10 Q. All right, but previously, you did not recall reaching
11 any tentative agreements.

12 A. We had not reached any.

13 Q. All right. You didn't recall previously whether you
14 had reached any, correct?

15 A. No. I told you we didn't have any NOBP.

16 Q. Okay, but you didn't have any as of April 20?

17 A. Um-hum.

18 Q. And you didn't have any as of May 1st, did you?

19 A. I don't believe.

20 Q. So on April 23rd, you received what's in evidence as
21 General Counsel Exhibit 4 and the second sentence of that
22 says this letter confirms that the Company will lock out all
23 USW represented employees at the Beaumont Refinery and
24 Beaumont Blending and Packaging Plant on Saturday, May 1 at
25 10 a.m., correct?

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1 A. Yes, sir.

2 Q. And it says the lockout will continue until the Union
3 accepts the Company's current offer, which was attached, or
4 the parties otherwise reach agreement on a new collective
5 bargaining agreement, correct?

6 A. Correct.

7 Q. Okay, and you asked Mr. Berend at the bargaining table
8 many times during the ten-month lockout what would it take
9 to end this lockout.

10 A. Correct.

11 Q. And his response was always sign a deal, correct?

12 A. Correct.

13 Q. Now, you may not have read the employee information
14 bulletins, but do you recall any discussion among employees
15 that the Company was pushing for a vote on the Company's
16 proposals?

17 A. I don't. I'm trying to think of when I would talk to
18 somebody about that. I mean...

19 Q. You wouldn't discuss the Company's...

20 A. No. I didn't follow -- I don't even follow the news.
21 I don't follow any of that. We have a 13-person committee.
22 13-person. They all do their own pieces on this.

23 Q. All right. Okay. So you get the strike notice -- you
24 get the April 23rd notice and you didn't withdraw the strike
25 notice, correct?

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1 A. Correct.

2 Q. By the way, the Union didn't give strike notice in --
3 all right. So when you received the April 23rd letter, you
4 didn't withdraw the strike notice, correct?

5 A. Correct.

6 Q. All right, and in fact, the Union never withdrew its
7 strike notice, did it?

8 A. A month in, I talked to Blake about pulling it. Would
9 that get our people back to work? He said no.

10 Q. And he told you people could come back to work when we
11 get a deal?

12 A. Correct.

13 *[Brief pause]*

14 Q. Now, do you remember -- do you know what Console
15 Supervisors are?

16 A. Yes, sir.

17 Q. Console Supervisors are excluded from the bargaining
18 unit, correct?

19 A. Correct.

20 Q. There are about 60 of them?

21 A. I guess. Yeah.

22 Q. All right, and how long have you been at ExxonMobil?

23 A. Since '94.

24 Q. And I guess at that point, it wasn't ExxonMobil. It
25 became ExxonMobil in 2001, right? The merger.

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- 1 A. Unfortunately, yes.
- 2 Q. When you arrived in '94, who owned the company?
- 3 A. Mobile.
- 4 Q. And do you recall a strike in 1988 or were you told
- 5 about a strike in 1988 prior to you coming?
- 6 A. Yeah. Yes. That was common talk. Yeah.
- 7 Q. And you were aware that the major issue in that strike
- 8 was whether the console supervisors would be in or out of
- 9 the unit.
- 10 A. Oh, yeah.
- 11 Q. Did you know that?
- 12 A. Yeah.
- 13 Q. Yes?
- 14 A. I did.
- 15 Q. All right, and so in 2021, the Union proposed putting
- 16 the console supervisors back in the unit; do you recall
- 17 that?
- 18 A. I do because most of them were our guys anyway.
- 19 Q. They support the Union?
- 20 A. Yeah.
- 21 Q. Okay, but they're not in the unit, correct?
- 22 A. They're not what?
- 23 Q. They're not in the unit. The bargaining unit.
- 24 A. Right, but the employees that were working were in the
- 25 bargaining unit. But the position was not in the bargaining

1 unit at the time.

2 Q. Do you recall Mr. Berend responding that's a permissive
3 subject of bargaining and we're not interested?

4 A. Yeah.

5 Q. Okay, and yet on May 1st, the Union was still insisting
6 on including the console supervisors in the bargaining unit,
7 wasn't it?

8 A. I don't remember when it dropped off.

9 Q. All right. Does May...

10 MR. DOOLEY: I'm going to object to relevance again,
11 Your Honor. There's no allegation of impasse here. There's
12 no allegation of bad faith and service bargaining. I just
13 don't understand where this is heading.

14 JUDGE WEDEKIND: A couple things. I hear you. I'm
15 missing a lot. What is it? What kind of supervisor?

16 MR. SPITZ: Console.

17 JUDGE WEDEKIND: How do you spell that?

18 MR. SPITZ: C-O-N-S-O-L-E.

19 JUDGE WEDEKIND: Like a console?

20 MR. SPITZ: Right.

21 JUDGE WEDEKIND: Okay.

22 MR. FLYNN: It's like the panel, Your Honor. The
23 equipment where they run the units.

24 JUDGE WEDEKIND: Okay. All right. Thank you.

25 So yeah, we're getting into the weeds, which you've

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1 indicated you didn't want to do. But the problem is the
2 Company is trying to show, I take it, the lockout had
3 everything to do with negotiations and nothing with the
4 decert petition and so to do that, I mean, short of some
5 kind of stipulation, don't they have to put in something
6 about the status of the negotiations and why they felt like
7 they needed to do the lockout to get any movement to get
8 where they wanted to go?

9 MR. DOOLEY: I mean, I don't think they have to get
10 into every proposal that was exchanged or I guess to the
11 extent that you'll allow it.

12 JUDGE WEDEKIND: Yeah. Well, I mean, with every single
13 proposal, I worry that this could go on for a month, but you
14 tell me. I mean, where are we going with this?

15 MR. SPITZ: Yeah.

16 JUDGE WEDEKIND: How far are we along? What...

17 MR. SPITZ: I mean, with this cross examination?

18 JUDGE WEDEKIND: Well, I mean, just on the subject of
19 every proposal that you disagreed with.

20 MR. SPITZ: We're -- I believe we're open to a
21 stipulation. We could have further discussion about that,
22 but it's the Company's position essentially that there were
23 four and really three must-haves. The fourth was the term.

24 JUDGE WEDEKIND: Okay.

25 MR. SPITZ: Okay. The three must-haves are the things

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1 that I've just gone through.

2 JUDGE WEDEKIND: And could you list them for now so
3 that...

4 MR. SPITZ: Yeah. So eliminating the A operator.

5 JUDGE WEDEKIND: Okay.

6 MR. SPITZ: The 54-month wage progression. Putting
7 everybody on a 54-month wage progression.

8 JUDGE WEDEKIND: Okay.

9 MR. SPITZ: And eliminating seniority bidding.

10 JUDGE WEDEKIND: That's three, and the fourth?

11 MR. SPITZ: And the fourth would be the term, which was
12 to stay off pattern.

13 JUDGE WEDEKIND: And so why are we talking about the
14 console supervisors? That's just something else that's out
15 there?

16 MR. SPITZ: Well, it's -- I'm throwing that in there
17 because it's a permissive subject that even as the Company
18 is threatening to lock the employees out, the Union still
19 has on the table and the Company took a strike over it in
20 1988. So if somebody was serious about reaching a
21 collective bargaining agreement, I would imagine that would
22 have been the first thing to go.

23 JUDGE WEDEKIND: All right. I'm going to allow it.
24 Keep going. I understand.

25 Q. BY MR. SPITZ: So do you recall, Mr. Morgan, if as of

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1 May 1, as the Company was walking people off the property,
2 whether the Union was still proposing that A operators be
3 part of the bargaining unit?

4 A. THE WITNESS: The console operator.

5 Q. I'm sorry. The console operator would be part of the
6 bargaining unit?

7 A. I don't remember when it got pulled off like I told you
8 a minute ago.

9 Q. You don't remember?

10 A. I don't remember when it got pulled off.

11 JUDGE WEDEKIND: So you say supervisor. He says
12 operator. Is that...

13 THE WITNESS: Can I explain?

14 MR. SPITZ: I made a mistake.

15 THE WITNESS: Can I explain?

16 MR. SPITZ: Oh, okay. Go ahead.

17 THE WITNESS: Can I explain?

18 JUDGE WEDEKIND: Yeah, sure.

19 THE WITNESS: So most of the bargaining unit guys,
20 girls, run the console.

21 JUDGE WEDEKIND: Okay.

22 THE WITNESS: It is the -- they are the leads over the
23 units. They are the ones that are directing traffic.

24 JUDGE WEDEKIND: What are they called by the Company?

25 THE WITNESS: Console operators...

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1 JUDGE WEDEKIND: Okay.

2 THE WITNESS: Console operators.

3 JUDGE WEDEKIND: So he just misspoke when he said
4 supervisors earlier?

5 THE WITNESS: Yeah. It's a supervisor role now.

6 JUDGE WEDEKIND: Okay.

7 THE WITNESS: As of '88.

8 JUDGE WEDEKIND: That's what the Company wanted?

9 THE WITNESS: But if they -- that's correct.

10 JUDGE WEDEKIND: Okay.

11 THE WITNESS: Back in '88.

12 JUDGE WEDEKIND: Okay.

13 Q. BY MR. SPITZ: So it's an emotional issue, I mean, to
14 you?

15 A. THE WITNESS: I wasn't here in '88.

16 Q. I know, but the issue of whether they're console
17 operators, console supervisors. You want them in the unit.
18 You said they're your guys?

19 A. Yeah. They were working it.

20 Q. All right, but in any event, you don't recall whether
21 you were still -- whether the Union still had a proposal on
22 console supervisors on the table on May 1?

23 A. No, I don't know.

24 Q. All right, and you never...

25 A. I don't know when it got pulled off.

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1 Q. You don't know when it -- okay and you don't know
2 whether it was on the table on May 1? Or you do?

3 A. No. I don't.

4 Q. Okay, and you don't recall that that being a major
5 issue among the people pushing for decertification that we
6 don't have a deal and the Union is still pushing for console
7 operators and they're walking people out the gate? You
8 don't remember hearing that?

9 A. I don't.

10 Q. All right. I'm going to hand you what's been marked as
11 Respondent Exhibit 3.

12 **(Respondent's Exhibit 3, marked for identification.)**

13 Now, I think you said you didn't get on the
14 decertification Facebook page, but you are familiar with
15 Facebook, right?

16 A. Correct.

17 Q. In fact, you are the administrator for the Union's
18 Facebook site, right?

19 A. Not the only, no.

20 Q. All right, but you are an administrator?

21 A. Yes, sir.

22 Q. And you posted numerous things on there?

23 A. Correct.

24 Q. Did you review everything that the Union posted on its
25 Facebook page during this period?

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1 A. Not everything, no.

2 Q. I've handed you Respondent 3. Exhibit 3. Do you
3 recall posting this post? We have pulled CCB off the table.
4 Trying to get movement from the Company. We will see.
5 Correct?

6 A. Correct.

7 Q. You recall that? Right, and CCB is the console
8 supervisor?

9 A. Correct.

10 Q. All right. Why did you feel the need to specifically
11 communicate this with all of your members?

12 A. We kept them informed the whole time.

13 Q. You told them...

14 A. That was another big move that we made...

15 Q. You informed...

16 A. ...towards the Company again.

17 Q. You informed them of every move the Union made at the
18 table?

19 A. We made -- we informed them of most of them, yeah.

20 MR. SPITZ: Okay. We move Respondent 3, Your Honor.

21 MR. FLYNN: No objection.

22 MR. DOOLEY: No objection, Your Honor.

23 JUDGE WEDEKIND: And so what is CCB?

24 THE WITNESS: Control room -- it's the same job.

25 JUDGE WEDEKIND: The same thing we've been talking

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1 about?

2 THE WITNESS: Console. It's a console job.

3 JUDGE WEDEKIND: Okay. Thank you. You said no
4 objection? Okay. It's received.

5 **(Respondent's Exhibit 3, received into evidence.)**

6 Q. BY MR. SPITZ: And would you agree that the Union made
7 it clear on its Facebook page that it opposed the
8 elimination of the A operator position?

9 A. THE WITNESS: Oh, yeah. Yes, sir.

10 Q. All right, and I'm going to hand you what's been marked
11 as Respondent...

12 **(Respondent's Exhibit 4, marked for identification.)**

13 [Brief pause]

14 A. Thank you, sir.

15 [Brief pause]

16 Q. Do you recognize Respondent Exhibit 4?

17 A. Yes, sir.

18 Q. All right, and you posted that?

19 A. Yes, sir.

20 Q. All right, and in it, you say that we believe -- that
21 the elimination of the A operator position, we believe the
22 Company is attempting to remove a level of safety, security,
23 and seniority with its proposal, correct?

24 A. Yes, sir.

25 Q. And you say the Company could easily train everybody up

1 to the A operator position today with the current contract
2 minus a few declinations, right?

3 A. Correct.

4 Q. That was the Union's proposal, to make everybody an A
5 operator.

6 A. Correct.

7 Q. Not eliminate the A operator. Make everyone an A
8 operator.

9 A. They wanted one classification and by doing that,
10 everybody would be at one classification. What they wanted.
11 No matter what you called it. You could've called it
12 anything you wanted.

13 Q. That's fine, but the Union's solution was...

14 A. Train everybody up.

15 Q. Don't eliminate the highest paid.

16 A. No, the highest trained.

17 Q. Okay.

18 A. Train everybody up.

19 Q. But that's fine. The A operators were the highest
20 paid, though, correct?

21 A. By pennies, but the highest trained.

22 Q. But anyway, the Company wanted to eliminate A operators
23 and the Union's solution was to make everybody A operators?

24 A. Train everybody up.

25 Q. But make everybody A operators?

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1 A. Correct. Train everyone up.

2 Q. But that's not what you testified to before, was it?

3 A. Training everybody up to be an A?

4 Q. We'll let the record speak for itself.

5 JUDGE WEDEKIND: There's no date on this, is there?

6 MR. DOOLEY: I don't see one.

7 MR. SPITZ: You know...

8 JUDGE WEDEKIND: Can we...

9 MR. SPITZ: This was provided, I believe, in the
10 subpoena response and for some reason, it's missing. My
11 notes say March 3rd. Unfortunately, it's not on this
12 document.

13 JUDGE WEDEKIND: It may not necessarily keep it from
14 coming in. I just thought it...

15 MR. SPITZ: Yeah.

16 JUDGE WEDEKIND: ...before we do admit it.

17 MR. FLYNN: We can look, Your Honor. Attempt to find
18 it.

19 MR. SPITZ: Yeah. I mean, if we find it, we'll
20 stipulate to it, but it -- this is...

21 JUDGE WEDEKIND: Okay.

22 Q. BY MR. SPITZ: Do you recall when this was posted?

23 A. THE WITNESS: No. I remember posting it. I don't
24 remember when it was posted.

25 JUDGE WEDEKIND: Well, I mean, can you tell generally

1 by the content of about when it was...

2 THE WITNESS: No.

3 MR. FLYNN: We found it, Judge. It's March 3rd, 2021.

4 JUDGE WEDEKIND: Okay. You're okay with that
5 stipulation?

6 MR. SPITZ: I -- that's what my notes say, too. So.

7 JUDGE WEDEKIND: Okay. March 3rd.

8 MR. SPITZ: But thank you. All right.

9 All right, and we move on Respondent 3. I'm sorry. 4.

10 JUDGE WEDEKIND: Yeah.

11 MR. FLYNN: No objection.

12 MR. DOOLEY: No objection, Your Honor.

13 JUDGE WEDEKIND: Okay. It's received.

14 **(Respondent's Exhibit 4, received into evidence.)**

15 Q. BY MR. SPITZ: And by the way, Mr. Morgan, the Union's
16 Facebook page is accessible to who?

17 A. THE WITNESS: Members only.

18 Q. All right.

19 *[Brief pause]*

20 Let's take a look first at Respondent 5. The committee
21 response to elimination of the A operator position and this
22 says sent March 3rd, 2021; do you recognize that?

23 **(Respondent's Exhibit 5, marked for identification.)**

24 A. It's the same language, but no, I don't.

25 Q. All right. Well, this might be -- Pat, the Union might

1 have done this.

2 MR. FLYNN: Yes. This was the MailChimp. This was
3 membership communications by e-mail.

4 Q. BY MR. SPITZ: Okay. So this was e-mailed to all of
5 the members on March 3rd?

6 A. THE WITNESS: MailChimp. Okay.

7 Q. Okay. So March 3rd?

8 A. Okay.

9 Q. All right.

10 COURT REPORTER: What's it called?

11 THE WITNESS: MailChimp.

12 MR. SPITZ: I think it's an automated...

13 THE WITNESS: C-H-I-M-P.

14 JUDGE WEDEKIND: And what is the MailChimp?

15 THE WITNESS: It's an app for sending group e-mails.

16 JUDGE WEDEKIND: Oh. Thanks.

17 Q. BY MR. SPITZ: All right. So that was mailed to all
18 members?

19 A. THE WITNESS: Correct.

20 MR. SPITZ: On March 3rd? All right. So we move
21 Respondent 5.

22 MR. FLYNN: No objection.

23 MR. DOOLEY: No objection, Your Honor.

24 JUDGE WEDEKIND: It's received.

25 **(Respondent's Exhibit 5, received into evidence.)**

1 Q. BY MR. SPITZ: And then looking at the second document.

2 This was posted by Jesse Herin; do you know Jesse Herin?

3 **(Respondent's Exhibit 6, marked for identification.)**

4 A. THE WITNESS: Yeah. He's a PSM Rep. Or was at the
5 time.

6 Q. I'm sorry. He's?

7 A. He was our PSM Rep at the time.

8 Q. And what is PSM?

9 A. Process safety.

10 Q. Got it, and was he also an administrator?

11 A. Yes.

12 Q. All right. Do you recall him posting this document on
13 the website on the Facebook page?

14 A. No.

15 Q. Do you doubt that it was posted to the Facebook page?

16 A. No, I don't doubt it.

17 MR. SPITZ: And I think the document speaks for itself.

18 This was produced in the Union's production. So we move

19 Respondent's 6.

20 MR. FLYNN: No objection.

21 MR. DOOLEY: No objection, Your Honor.

22 JUDGE WEDEKIND: Okay. It's received. Thanks.

23 **(Respondent's Exhibit 6, received into evidence.)**

24 Q. BY MR. SPITZ: And I'll hand you what's been marked as

25 Respondent 7.

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1 **(Respondent's Exhibit 7, marked for identification.)**

2 Do you recognize this?

3 MR. FLYNN: Jonathan, one more. Oh. Sorry about that.

4 We got them. Never mind.

5 Q. BY MR. SPITZ: Do you recognize this?

6 A. THE WITNESS: No, I don't.

7 Q. All right. It doesn't look like something that your

8 Union put out?

9 A. Oh. It is something we put out. It's done by
10 MailChimp. That yellow box.

11 Q. Okay.

12 A. It's a copy and paste from MailChimp.

13 Q. And again, that went to all members?

14 A. Correct.

15 Q. But you don't recall when this went out?

16 A. No, sir.

17 Q. But that was the second document that got MailChimped
18 to all of our members, correct?

19 A. I don't know if it's the second. There's a bunch.

20 There's a bunch went through MailChimp. I don't know where
21 this is at.

22 Q. I mean, is it fair to say that the Union e-mailed a
23 bunch of education pieces of the A operator proposal?

24 A. Oh, I'm sure. Yeah.

25 Q. And the Union committee opposed the Company's proposal?

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- 1 There's no...
- 2 A. Yeah. No doubt.
- 3 Q. And made it clear to the members, right?
- 4 A. Sure.
- 5 Q. Throughout the entire bargaining process?
- 6 A. Correct.
- 7 Q. Right up through the Company's proposal in September
- 8 and the vote in October, correct?
- 9 A. Correct.
- 10 Q. And the same thing with the 54-month progression.
- 11 Right up to the Company's proposal in October, correct?
- 12 A. Yeah. Sure. Yeah.
- 13 Q. And the same thing with eliminating seniority bidding,
- 14 correct?
- 15 A. Correct.
- 16 Q. And the MailChimp, it goes to members only?
- 17 A. Should be members only.
- 18 Q. It would go to people who may have resigned their
- 19 membership as well, correct?
- 20 A. Depending on if they were taken off.
- 21 Q. All right, but the Union...
- 22 A. I don't -- I have zero to do with MailChimp.
- 23 Q. All right.
- 24 A. So I don't know how that process works.
- 25 Q. All right.

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1 A. I didn't pull it -- I didn't even open my MailChimp
2 when it came to me.

3 Q. It wouldn't surprise you if the list was not updated
4 regularly, would it?

5 A. It's possible. Yeah.

6 MR. SPITZ: We move Respondent's 7.

7 MR. FLYNN: No objection.

8 MR. DOOLEY: No objection, Your Honor.

9 JUDGE WEDEKIND: It's received.

10 **(Respondent's Exhibit 7, received into evidence.)**

11 Q. BY MR. SPITZ: But it's fair to say that the Union made
12 no secret at the table that it opposed those three items,
13 correct?

14 A. THE WITNESS: Correct.

15 Q. It made no secret to the members, right, and in fact,
16 the Union spoke openly about opposing the Company's
17 proposals to the news media as well, right?

18 A. I did not.

19 Q. But there were many articles that you saw, correct?

20 A. Again, I don't watch the news.

21 Q. All right.

22 A. You're not going to believe me, but I don't watch the
23 news.

24 Q. Or read the papers? All right.

25 JUDGE WEDEKIND: Was that a no?

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1 THE WITNESS: I said no. I'm sorry. I'm sorry.

2 Q. BY MR. SPITZ: Who is Mickey Mosley?

3 A. THE WITNESS: He's currently the President. At the
4 time, he was Vice President and he's the BMP representative.

5 Q. I'm handing you what's been marked as Respondent
6 Exhibit 8.

7 **(Respondent's Exhibit 8, marked for identification.)**

8 Do you recognize that document?

9 *[Brief pause]*

10 A. No, I don't.

11 Q. It appears to be a Facebook post.

12 A. It looks like it. Yes, sir.

13 Q. Made by Mr. Moseley, but you didn't read everything
14 that went up on the...

15 A. No, sir.

16 MR. SPITZ: Guys, this came from the production if
17 you'll stipulate...

18 MR. FLYNN: Oh, yeah. We'll stipulate to it.

19 MR. SPITZ: We'll move that.

20 MR. FLYNN: No objection.

21 Q. BY MR. SPITZ: In this post...

22 MR. DOYLE: No objection, Your Honor.

23 JUDGE WEDEKIND: It's received. Thanks.

24 **(Respondent's Exhibit 8, received into evidence.)**

25 Q. BY MR. SPITZ: Dated August 2nd, 2021. Mr. Moseley says

1 as has been the case, the Company failed to provide the new
2 proposal or make any changes to their current proposal, even
3 after knowing that a huge majority of our membership has
4 made it known that they do not wish to vote on it, let alone
5 ratify it. Would you agree that a huge majority of the
6 membership made it known that they were not interested in
7 the Company's proposal?

8 A. THE WITNESS: Yes, sir.

9 Q. And I'm sure you would also agree that the Union made
10 that well known to the Company at the table, correct?

11 A. I don't know if I called him when the vote was over. I
12 don't remember.

13 Q. Well, this is August. So there was no vote in August,
14 right.

15 A. Okay.

16 Q. In fact, the first vote was in October, correct?

17 A. I guess. Listen, just to let you know, me and you had
18 this conversation a while ago. I was in and out of (b) (6), (b) (7)
19 (b) (6), (b) (7)(C) in and out of stuff, and I was part of it, not
20 part of it, part of it, not part of it. So some of that is
21 a blur. So I'm not trying to evade your question.

22 Q. I understand.

23 A. Some of it's a blur.

24 Q. It was -- if you recall, it was later in the year. The
25 vote.

1 A. Correct.

2 Q. Okay. Do you recall saying at the table a member of
3 your committee saying we will never agree to these
4 proposals?

5 A. I don't remember that.

6 Q. It could've been said?

7 A. It's possible. Yeah. 13 different personalities. 13
8 different people. Absolutely.

9 Q. Do you recall the Company's September 27 proposal, you
10 know, the proposal that it made leading up to the Union's
11 decision to take the Company's proposal to a vote?

12 A. I don't remember the specifics of it. No.

13 Q. Do you recall posting a description of the September 27
14 meeting on Facebook?

15 A. I'd have to see it.

16 Q. I'll hand you what's been marked as Respondent 9.

17 **(Respondent's Exhibit 9, marked for identification.)**

18 A. Thank you, sir. Oh, wow. I'm not trying to show my
19 age, but I can barely see this. I'm sorry.

20 Q. Yeah. Well, let's look at the second sentence and I'm
21 right there with you. We did our best with what was
22 produced to us.

23 The Company presented a new offer for the first time
24 since January; do you recall that being the case?

25 A. I don't even see where you see that at.

1 Q. The second sentence.

2 A. The second paragraph, second sentence?

3 Q. No. The first paragraph, second sentence.

4 A. That's possible. Yeah.

5 Q. Well, without getting into the specific dates, if you
6 recall, the Company made its first significant proposal
7 since the lockout right before the Union decided to take the
8 Company's offer to a vote, correct? Do you recall that?

9 A. I don't remember the order, but that's possible. Yeah,
10 that's possible.

11 Q. And do you recall writing in this Facebook post the
12 second to last paragraph, although these changes are
13 recognized as movement by the Company, the overall 40-page
14 comprehensive offer still leaves much to be desired?

15 A. Correct.

16 Q. So you recognize that the Company's proposal made
17 movement, correct?

18 A. I just don't remember what the movement was.

19 Q. Right, but you do recall that in your mind at the time,
20 the Company had made significant movement, correct?

21 A. No, I've never -- they've never made significant
22 movement.

23 Q. But you recall but in your mind at the time, the
24 Company made movement?

25 A. Very little, if any.

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1 Q. Well, this letter says although these changes are
2 recognized as movement; do you see that?

3 A. Um-hum.

4 Q. All right. So you wrote that, so you believed that,
5 correct?

6 A. Correct.

7 Q. They were recognized as movement. But you also wrote,
8 to be fair, the offer still leaves much to be desired,
9 correct?

10 A. Correct.

11 Q. And for that reason -- and you said the Company still
12 maintains their position on some very important issues, such
13 as eliminating the A operator positions, the right to move
14 an operator anywhere they choose anytime, regardless of
15 seniority, and eliminating job bidding completely; do you
16 recall writing that?

17 A. Yes, sir.

18 Q. And you wrote these three proposals alone are still a
19 direct tap on the core values of the Union's safety,
20 seniority, and security, right?

21 A. Yes, sir.

22 Q. So for this reason, the Union urged members to vote no
23 on the Company proposal in October, correct?

24 A. That sounds right.

25 Q. Yeah. I mean, it's not -- it's not here, but you're --

1 ultimately, the Union committee did urge members to vote no
2 on the proposal, right?

3 A. Correct.

4 Q. And you told the Company that, right?

5 A. That's right.

6 Q. And do you recall that the decertification petition was
7 filed in the first week of October? Do you recall that?

8 A. I don't recall the dates.

9 JUDGE WEDEKIND: Do we have a stipulation to that?

10 MR. DOOLEY: There's a -- I think one of the Joint
11 Exhibits is the Notice of Election or the Notice of the
12 Petition being filed.

13 MR. SPITZ: That might be, but I believe the petition
14 was filed October 6. 5. October 5th.

15 JUDGE WEDEKIND: Okay.

16 MR. DOOLEY: I just have to doublecheck the date as
17 well.

18 JUDGE WEDEKIND: That's what the -- I think I got that
19 from somewhere and maybe in the -- I don't know. I got it
20 from one of the pleadings. October 5th.

21 MR. DOOLEY: So the Notice of Petition is Joint Exhibit
22 37. If we want to take a look at that, that might give us
23 an answer. I don't remember if that's on there or not.

24 MR. FLYNN: It wasn't in the Formal Papers.

25 MR. DOOLEY: The petition? No, but we can get it in.

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1 That's no problem.

2 MR. FLYNN: It's already a Joint Exhibit.

3 MR. DOOLEY: Not the petition itself...

4 MR. SPITZ: There's a Notice of Petition, but I don't
5 think it's dated. You know what, it probably makes sense
6 for us to reach some stipulations, but I don't think we have
7 to hold things up right now.

8 JUDGE WEDEKIND: No, no. Yeah, that's fine.

9 MR. DOOLEY: I can get a real quick answer on this.

10 JUDGE WEDEKIND: Okay.

11 MR. SPITZ: If you're on it, we can do it right now and
12 I think we're...

13 MR. DOOLEY: October 5th is correct.

14 JUDGE WEDEKIND: Okay. Thanks.

15 MR. FLYNN: We'll stipulate to that.

16 JUDGE WEDEKIND: All right.

17 Q. BY MR. SPITZ: Do you recall that you suggested some
18 specific changes to the Company's offer, you know, that
19 would allow you to take it to a vote?

20 A. THE WITNESS: I think the whole time through, we were
21 trying to get -- we were trying to do exactly that. I'm
22 sorry. That's (b) (6), (b) (7)(C). We were trying to get that to move.
23 Get them moved towards us.

24 Q. All right...

25 A. As we were moving towards them.

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1 Q. But you refused to take the Company's offer to a vote
2 all the way until October, correct?

3 A. We had multiple votes in between there where the
4 membership said we don't want to take this to a vote.

5 Q. Do you recall Mr. Berend asking you why won't you take
6 this to a vote and you responding we did vote, we voted to
7 strike in December?

8 A. No, I don't recall that.

9 Q. You don't recall that?

10 A. I don't recall that.

11 Q. If he...

12 A. I don't recall -- he can testify all he wants. I don't
13 recall ever threatening strike. I don't recall it, but he
14 can testify all he wants.

15 Q. All right. Now, with respect to the Company's offer of
16 September 27, if this jogs your memory, do you recall the
17 Company making changes to ensure that people who transferred
18 between Blending and Packaging and the Refinery maintain
19 their seniority?

20 A. Yes, sir.

21 Q. All right. So that was part of the Company's movement?

22 A. Correct.

23 Q. And do you recall the Company increasing job security
24 protection from layoffs for material specialists and
25 business support specialists?

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1 A. Yeah. The six people? Yeah.

2 Q. But they did make that movement?

3 A. That's right. I don't think we denied that.

4 Q. And that the Company proposed or agreed to combine
5 package and warehouse operator lines of progression in the B
6 and P, correct?

7 A. Yeah, with stipulations.

8 Q. But those were the three movements that the Company
9 made and the Company also added a \$500 ratification bonus,
10 correct?

11 A. Yeah.

12 Q. You were not impressed with that? Yes?

13 A. No.

14 Q. But when the Company put the \$500 on the table, there
15 was no proposed ratification bonus, correct?

16 A. Correct.

17 Q. So it went from zero to 500?

18 A. Yeah.

19 Q. When the Union actually took the Company's proposal to
20 a vote, there were actually vote no signs posted outside the
21 Union Hall, weren't there?

22 A. Yes, sir. We already discussed that.

23 *[Brief pause]*

24 MR. SPITZ: I don't think I moved Respondent 9 and 10.

25 I just want to make sure I do that.

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1 MR. DOOLEY: I don't think we've seen 10 yet.

2 JUDGE WEDEKIND: Yeah. We haven't seen 10, but...

3 MR. SPITZ: Oh.

4 JUDGE WEDEKIND: Any objection to 9?

5 MR. DOOLEY: No, Your Honor.

6 MR. FLYNN: No.

7 JUDGE WEDEKIND: Okay. It's in.

8 **(Respondent's Exhibit 9, received into evidence.)**

9 THE WITNESS: Thank you, sir.

10 MR. SPITZ: You know what, Your Honor, just to be
11 clear. So the first page of a few of these exhibits have
12 like a title and a date. That was added during the Union's
13 document production, right? Or was this part of the
14 document itself?

15 MR. FLYNN: That was all part of it. We didn't add
16 that.

17 MR. SPITZ: Okay. All right. I thought you were being
18 helpful.

19 MR. FLYNN: No.

20 MR. SPITZ: No? Okay.

21 MR. FLYNN: That was the -- that was already there.
22 That's the date it was sent by MailChimp.

23 MR. SPITZ: Okay.

24 MR. FLYNN: And the time.

25 MR. SPITZ: So this was a MailChimp document?

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1 MR. FLYNN: Correct.

2 **(Respondent's Exhibit 10, marked for identification.)**

3 Q. BY MR. SPITZ: Mr. Morgan, do you recall this going
4 out?

5 A. THE WITNESS: Yes, sir.

6 Q. And so the vote no. So is that sort of the ray line on
7 the MailChimp. It goes out and says vote no.

8 A. Yeah.

9 Q. Okay. So that was sent to everybody on the Union's e-
10 mail list?

11 A. Yes, sir.

12 Q. And of course, urging the employees to vote against the
13 Company's offer?

14 A. Yes, sir.

15 Q. All right. With all of the documents that are
16 attached. So actually, there's -- on the fourth or fifth
17 page there, there's vote no part two. So that was a
18 separate mailing?

19 A. I guess. Again, I'm not a MailChimp guru so I'm
20 assuming.

21 MR. FLYNN: Yeah. It's another date. October 15.

22 Q. BY MR. SPITZ: You and me both. Okay. So these went
23 out on October 13 and respectively, according to the...

24 A. THE WITNESS: The date.

25 MR. SPITZ: The date. We move Respondent 10.

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1 MR. FLYNN: No objection.

2 MR. DOOLEY: No objection, Your Honor.

3 JUDGE WEDEKIND: It's received. Thank you.

4 **(Respondent's Exhibit 10, received into evidence.)**

5 Q. BY MR. SPITZ: All right. So on February 28, 21, 2022,
6 the members ratified, voted to ratify a Company proposal,
7 correct?

8 A. THE WITNESS: Yes, sir.

9 Q. All right, and that proposal had the Company's A
10 operator proposal on it, didn't it?

11 A. Yes, sir.

12 Q. And the 54-month progression?

13 A. Correct.

14 Q. And the elimination of seniority?

15 A. Correct.

16 Q. Or seniority bidding?

17 A. Eliminate seniority. You're correct.

18 Q. So at that point, the parties had a CBA, correct?

19 A. Correct.

20 Q. All right, and the Company ended the lockout, right?

21 A. A couple weeks later. Yeah. Correct.

22 Q. After a Return-to-Work Agreement was signed, right?

23 A. Yes, sir.

24 Q. And that's what it said it would do way back in

25 February when it said we will end the lockout when we get a

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1 signed agreement, correct?

2 A. Correct.

3 MR. SPITZ: Your Honor, if I could just take a minute
4 to make sure that I've completed...

5 JUDGE WEDEKIND: Sure. Let's go off the record.

6 *[Off the record]*

7 MR. SPITZ: We have no further questions at this time.

8 Thank you.

9 JUDGE WEDEKIND: All right. Redirect?

10 REDIRECT EXAMINATION

11 Q. BY MR. DOOLEY: Just very briefly, Your Honor.

12 Mr. Morgan, I just wanted to make sure this was clear.
13 There had been some conversation during your testimony about
14 the national strike in 2015. Was Beaumont involved with
15 that?

16 A. THE WITNESS: No, sir.

17 Q. And the strike that was discussed in 1988, do you know
18 if there's been a strike at Beaumont since then?

19 A. No, sir, there has not.

20 MR. DOOLEY: I have nothing further at this time, Your
21 Honor.

22 MR. FLYNN: No questions, Your Honor.

23 MR. SPITZ: Nothing further, Your Honor. Thank you.

24 JUDGE WEDEKIND: Okay. Thank you very much for your
25 testimony.

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1 THE WITNESS: I put those...

2 MR. DOOLEY: Oh, yeah, yeah. That's fine.

3 JUDGE WEDEKIND: What's your plan? Do you want to stop
4 for the day or what do you want to do?

5 MR. DOOLEY: Yeah. Probably. We'll have one more
6 witness in the morning and then our subpoenaed witness,
7 we're hoping to get in by video between 11 and 2 p.m.
8 Central.

9 JUDGE WEDEKIND: Okay.

10 MR. SPITZ: So Sanderson is your next witness then?

11 MR. DOOLEY: Yeah. Is there a couple more floating
12 around over there?

13 MR. SPITZ: Yeah. We'll...

14 JUDGE WEDEKIND: I think you said earlier. Was he
15 going to be a short witness?

16 MR. DOOLEY: Sanderson?

17 JUDGE WEDEKIND: Yeah.

18 MR. DOOLEY: My part with him should be relatively
19 short and I don't know how long the Company wants to spend
20 with him.

21 JUDGE WEDEKIND: Okay. All right. So we'll meet at
22 9:00. Right? That gives us two hours before 11.

23 MR. DOOLEY: That sounds good to me, Your Honor.

24 JUDGE WEDEKIND: Thank you very much.

25 MR. SPITZ: Thank you.

1 JUDGE WEDEKIND: And we also have the attorney client
2 issue. That's the 11:00.

3 MR. DOOLEY: Yep. Yep, that's right.

4 JUDGE WEDEKIND: The witness. Okay.

5 THE COURT REPORTER: Do you want to go...

6 JUDGE WEDEKIND: Yes. Off the record. Thank you.

7 **(Whereupon, the above-entitled matter was adjourned at**
8 **5:12 p.m. and scheduled to reconvene at 9:00 a.m. Central on**
9 **Tuesday, February 14, 2023.)**

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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of ExxonMobil Corporation, Beaumont Refinery, Case No. 16-CA-276089 et al, on the 13th day of February, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

David Molinaro, Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos. 16-CA-276089 et al.

EXXONMOBIL CORPORTATION, BEAUMONT REFINERY,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC.

Place: Houston, Texas
Date: February 14, 2023
Pages: 130 through 335
Volume: 2 of 4

OFFICIAL REPORTERS

ARS REPORTING
22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

EXXONMOBIL CORPORATION, BEAUMONT
REFINERY,

and

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED-INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-
CIO/CLC,

Case Nos.

16-CA-276089

16-CA-276092

16-CA-276702

16-CA-277103

16-CA-278743

16-CA-287615

16-CA-287625

16-CA-288417

The above-titled matter came on for further hearing pursuant to adjournment, before Administrative Law Judge Jeffrey D. Wedekind, on Monday, the 14th day of February 2023, at the Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas at 9:02 a.m. central time.

A P P E A R A N C E S

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#

A P P E A R A N C E S

(continued)

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1		<u>I N D E X</u>				
2						
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>
4						
5	BRIAN SANDERSON	143	214	252	262	
6		518		255	265	
7				264		
8						
9	THOMAS	273	283	327		328
10	FREDRIKSEN					
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1		<u>E X H I B I T S</u>	
2			
3	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
4			
5	ALJ		
6			
7	1	225	226
8			
9	RESPONDENT		
10			
11	11	225	226
12			
13	12	230	231
14			
15	13	232	233
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17	14	232	233
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19	15	232	233
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21	16	238	241
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23	17	246	247
24			
25	18	247	247

P R O C E E D I N G S

[Time Noted: 9:08 a.m. central time]

1 JUDGE WEDEKIND: Okay, this is the second day
2 of hearing in ExxonMobil. We completely finished
3 up with the General Counsel's first witness. There
4 are a couple things we want to talk about before we
5 call the next witness.

6 First, my proposal is to put the settlement in
7 as ALJ 1. Exhibit 1? Any objection?

8 **(ALJ Exhibit 1, marked for identification.)**

9 MR. SPITZ: No objection.

10 JUDGE WEDEKIND: Just for the purpose of
11 showing what happened.

12 MR. SPITZ: No objection to the settlement.

13 JUDGE WEDEKIND: Not for any substantive
14 reason.

15 MR. FLYNN: No objection.

16 JUDGE WEDEKIND: Okay.

17 MR. DOOLEY: No objection, Your Honor.

18 JUDGE WEDEKIND: Okay. So if we could mark it -
19 - Can we mark it as ALJ 1? It's received.

20 **(ALJ Exhibit 1, received into evidence.)**

21 And General Counsel, you said you have updated
22 or some information about the next witness later
23 today?

1 MR. DOOLEY: Yes, Your Honor.

2 JUDGE WEDEKIND: Regarding the documents?

3 MR. DOOLEY: Yes, Your Honor. So, the witness
4 I intend to call about these documents that were
5 obtained on the Respondent's internet system is a
6 former employee and union official with the
7 Independent Laboratory Employees Union out of
8 Clinton, New Jersey.

9 Because he was a former union official at the
10 time these documents were obtained, the attorney
11 for the union would like to be present for his
12 testimony.

13 Additionally, we have another potential
14 witness who independently accessed these documents.
15 I haven't been able to fully confirm this part yet,
16 but my understanding is the documents were still
17 accessible as of this morning. The witness I'm
18 speaking of did access them around the same time as
19 our other witness initially.

20 MR. STANLEY: Your Honor?

21 JUDGE WEDEKIND: Yeah? Yes.

22 MR. STANLEY: To be frank, it's disturbing that
23 the General Counsel continues to, it sounds like,
24 pass this document around. Or at least discuss --
25 I mean, these documents should be put under lock

1 and key at this point, until we have testimony..

2 MR. DOOLEY: I haven't passed the document to
3 anybody.

4 JUDGE WEDEKIND: Mr. Dooley, let him finish,
5 and then we'll...

6 MR. STANLEY: They're continuing to base a case
7 around these documents, when those documents should
8 be set aside until some sort of -- I don't know
9 when that kind of ruling can be issued under these
10 circumstances, but it's -- They should just not be
11 doing anything with those documents.

12 JUDGE WEDEKIND: General Counsel, do you want
13 to respond?

14 MR. DOOLEY: Yes, Your Honor. I haven't done
15 anything with the documents. As I said, the
16 witness that we were initially able to make contact
17 with was a former ILU Union official. The union
18 attorney was aware of the situation and aware that
19 we intended to call this witness. And he's aware
20 of another witness that is willing to testify if we
21 need him.

22 And again, I don't know how many people could
23 have accessed these documents. It's obviously more
24 than one. It seems like they've just been out
25 there for anyone to find for some time now.

1 MR. STANLEY: For the General Counsel, or the
2 counsel for the union, or any counsel, would have
3 fulfilled their ethical obligations and disclosed
4 this issue months, weeks, whatever ago, we would
5 not be here and maybe more folks would not know
6 about this document or possess the document.
7 Completely unacceptable.

8 MR. DOOLEY: Well, this wasn't a situation
9 where, you know, the employer unintentionally
10 disclosed this information to us, to the agency.
11 This is information that's apparently been, as far
12 as I can tell, available to employees for more than
13 a year. Like, who knows how many people haven't
14 seen at this point?

15 JUDGE WEDEKIND: Well, maybe we'll find out
16 from testimony today.

17 Alright, you know -- we're not -- from what I
18 understand the General Counsel just got it a week
19 ago and they've been trying to figure out what to
20 do with it.

21 Related to that, I'd like to get more
22 clarification from the General Counsel at some
23 point before the witness testifies and before we
24 get into, you know, the substance of this document,
25 if we do. Whether your position is that it is --

1 You agree that it's attorney client privilege or
2 collective bargaining privilege, or product or
3 whatever, and that the only issue is waiver. I'd
4 like to know whether that's your position.

5 MR. DOOLEY: I agree. They're certainly going
6 to raise...

7 JUDGE WEDEKIND: No, I thought they were going
8 to raise it whether you agree that it's privileged
9 or whatever. It's aside from the issue of waiver.

10 MR. DOOLEY: I mean, I think there's a strong
11 argument that these weren't, as far as I can tell
12 from the copies we have marked as confidential or
13 anything like that in any way. They were just up
14 there on the SharePoint. No effort apparently made
15 apparently to keep them confidential.

16 JUDGE WEDEKIND: I hear you. I'm sorry. I
17 hear you. I understand that. I understand that
18 there's an issue about whether they took reasonable
19 precautions. I'm just asking -- the reason I'm
20 asking you this is whether or not I should be
21 looking at this document in camera at any point.
22 That's the reason I'm asking. Just a little
23 advance notice of what's going to happen. There's
24 no reason for me to look at it at this point if you
25 agree that on its face, it's privileged. And

1 absent being up on the internet, accessible, would
2 it be privileged?

3 MR. DOOLEY: I would say it certainly contains
4 communications with an in-house attorney.

5 JUDGE WEDEKIND: Under the attorney client
6 privilege, for the purpose of seeking legal advice?

7 MR. DOOLEY: I mean, that part might be
8 arguable. In terms of...

9 JUDGE WEDEKIND: Well that's the issue. I mean
10 it's...

11 MR. DOOLEY: ...bargaining strategy Berbiglia.
12 I think that's pretty clear.

13 JUDGE WEDEKIND: Yeah, that's pretty clear.

14 MR. DOOLEY: Yeah.

15 JUDGE WEDEKIND: For both. For all -- for both
16 sets of documents. There's two sets of documents,
17 right?

18 MR. DOOLEY: Right, and some of the documents
19 were, it looks like, completed after bargaining had
20 concluded. So it wouldn't really be bargaining
21 strategy. It's more like they're talking about
22 what had occurred during bargaining, what they
23 thought went right, what they thought went wrong.

24 JUDGE WEDEKIND: But you agree that that would
25 still come under Berbiglia. It's an ongoing

1 collective bargaining relationship? I'm just
2 asking, I'm not trying to persuade you one way or
3 the other. I mean, it's an issue -- I'm not sure
4 if there are cases about that. I haven't found
5 any.

6 MR. DOOLEY: Yeah, and I haven't had time to do
7 a deep dive into the case law on the privilege
8 side. I've been looking at the waiver cases. I
9 assumed the company would raise the privilege part
10 and we'll have to respond. And I am -- I do have
11 people trying to help me put together some cases in
12 case we need to argue it.

13 JUDGE WEDEKIND: Sure. So there's all sorts of
14 procedural issues about how we'll go about this.
15 I'm just trying to anticipate what might happen.

16 MR. STANLEY: I can give you a direct answer.
17 They're privileged. There's really no question.

18 JUDGE WEDEKIND: That's -- I understand.

19 MR. STANLEY: They're attorney client and
20 they're Berbiglia.

21 JUDGE WEDEKIND: Okay. Okay.

22 MR. STANLEY: And General counsel, when he
23 first notified us of this last week, said they were
24 privileged on their face.

25 JUDGE WEDEKIND: Okay.

1 and spell it for us?

2 MR. SANDERSON: Brian Sanderson, B-R-I-A-N,
3 last name, S-A-N-D-E-R-S-O-N.

4 JUDGE WEDEKIND: Great. Thank you. Raise your
5 right hand. I'll swear you in.
6 (Whereupon,

7 **BRIAN SANDERSON**

8 having been sworn/affirmed, was called as a witness
9 herein, and was examined and testified as follows:)

10 JUDGE WEDEKIND: Great. Thank you very much.
11 Counsel?

12 MR. DOOLEY: Good morning, Mr. Sanderson. My
13 name is Brain Dooley. I'm an attorney with the
14 National Labor Relations Board. I believe we
15 talked briefly, but I haven't spoken to you yet in
16 any detail before.

17 DIRECT EXAMINATION

18 Q. BY MR. DOOLEY: Mr. Sanderson, are you
19 currently employed?

20 A. THE WITNESS: I am.

21 Q. Who is your employer?

22 A. ExxonMobil.

23 Q. How long have you been with ExxonMobil?

24 A. A little over ten years now. Or right around
25 ten years.

1 Q. What's your job title?

2 A. I'm an operator, a unit operator. And right
3 now I'm stepped up into what they call a CSS
4 position.

5 JUDGE WEDEKIND: What did you call it? What
6 kind of position?

7 THE WITNESS: A unit operator, and I stepped up
8 into what they would consider a CSS position.

9 JUDGE WEDEKIND: Try to keep your voice up if
10 you can.

11 COURT REPORTER: I couldn't hear the witness,
12 Your Honor. Did you say, "CSS"?

13 THE WITNESS: CSS.

14 Q. BY MR DOOLEY: What do you do in that position?

15 A. BY THE WITNESS: Currently I operate the
16 console which runs multiple units.

17 Q. Are you affiliated with any union?

18 A. I'm represented by USW. Under their title,
19 but I'm not paying dues.

20 Q. Have you ever held any positions or offices
21 with the union?

22 A. No.

23 Q. Mr. Sanderson, did you speak to anyone to
24 prepare for the hearing today?

25 A. Prepare for what I'm going to say? No. I

1 spoke with this group over here. They explained
2 what was going to happen today.

3 Q. Okay. Mr. Sanderson, there's a binder up
4 there with a bunch of exhibits in it. Can you --
5 Well, first before I ask that, have you shared your
6 affidavit with anyone in the room today?

7 A. Yeah. They asked for it and I shared it to
8 them.

9 MR. DOOLEY: Your Honor, I'd ask permission to
10 proceed with this witness under 611(c).

11 JUDGE WEDEKIND: Any objection?

12 MR. SCHUDROFF: I mean, Your Honor, he hasn't
13 established that there's any hostility at this
14 point that warrants 611(c) instruction.

15 JUDGE WEDEKIND: Do you want to respond?

16 MR. DOOLEY: I mean, he spoke with the
17 attorneys for the employer prior to the hearing.
18 He shared his affidavit with them prior to the
19 hearing. I think there's a pretty clear alignment
20 of interest there.

21 JUDGE WEDEKIND: You disagree with that?

22 MR. SCHUDROFF: I believe that it has --
23 subpoena witness by the General Counsel, not by
24 himself. I think if the General Counsel wants to
25 call on him, there still has not been a

1 satisfactory showing that there's any hostility at
2 this point. If he wants to further explore and
3 then revisit that, that would be okay.

4 JUDGE WEDEKIND: Do you want to ask single
5 questions?

6 MR. DOOLEY: Sure. I'll just proceed as normal
7 for now...

8 JUDGE WEDEKIND: Okay.

9 MR. DOOLEY: ...and you know, we'll get there
10 if we need to.

11 JUDGE WEDEKIND: Okay.

12 Q. BY MR. DOOLEY: Mr. Sanderson, in the binder
13 there that you got in front of you, can you look
14 through to what's marked as 37?

15 JUDGE WEDEKIND: Joint Exhibit 37?

16 MR. DOOLEY: Yeah.

17 THE WITNESS: The one with the tab 37 on it?

18 MR. DOOLEY: Yeah.

19 THE WITNESS: Okay.

20 MR. DOOLEY: It's a couple pages.

21 THE WITNESS: Okay.

22 Q. BY MR. DOOLEY: If you could just look over all
23 the pages. Can you tell me what that is?

24 A. I believe it's what NLRB sent out, the notice
25 of petition for election, which means that -- I

1 believe it's what they put out after the 30% was
2 filed with the NLRB. Is that correct?

3 Q. Okay. So this is in relation to a
4 decertification petition. That's your
5 understanding?

6 A. Oh, yes. Correct.

7 Q. Were you involved with that petition at all?

8 A. Yes.

9 Q. How were you involved?

10 A. I ran it.

11 Q. When did you start trying to gather support
12 for a decertification?

13 A. Officially, I sent out my first communication
14 March 8-9. Something around that time.

15 JUDGE WEDEKIND: March?

16 THE WITNESS: 8TH or 9th.

17 JUDGE WEDEKIND: Of?

18 THE WITNESS: Oh, I'm sorry. '21.

19 JUDGE WEDEKIND: Thank you.

20 Q. BY MR. DOOLEY: And when you say you sent out
21 your first communication, how was that sent?

22 A. BY THE WITNESS: It was an email. A company
23 email.

24 Q. So you sent the email using the company's
25 email system?

1 A. Yes.

2 Q. And who was it sent to?

3 A. The bargaining -- Everyone at the time that
4 was in the bargaining unit.

5 Q. How did you obtain the email addresses for all
6 the employees in the bargaining unit?

7 A. Two ways. They're all on Outlook. We all
8 have access to that. And also, I asked Mr. Stahel
9 for an updated version of the bargaining unit.
10 That's on the internet, but it's not updated as
11 much, so I wanted to make sure I was sending the
12 email to the right people.

13 Q. And Mr. Stahel, would that be Andrew Stahel?

14 A. Yes.

15 Q. And who is he?

16 A. He worked at HR in Beaumont at the time.

17 Q. When did you first make contact with Mr.
18 Stahel about the decertification effort?

19 A. There were several EIB's that had come out
20 mid-February. I don't have the -- I didn't
21 memorize the time frame on that one. But I'm
22 sorry. 2021, February.

23 JUDGE WEDEKIND: I don't understand the answer.

24 MR. DOOLEY: I believe he said that he

25 initially contacted Mr. Stahel in about mid-

1 February.

2 THE WITNESS: I'm sorry. There were bulletins
3 about -- They were updating what was going on with
4 the negotiations.

5 JUDGE WEDEKIND: Oh, okay. And...

6 THE WITNESS: He's the one who was sending them
7 out so I called him with questions.

8 JUDGE WEDEKIND: Okay.

9 Q. BY MR. DOOLEY: And what kind of questions did
10 you have for Mr. Stahel?

11 A. BY THE WITNESS: Initially it was generally
12 what was going on, was the company really prepared
13 to lock us out, did the union file for strike, did
14 the company file lock-out notices, and then asked
15 for any information he could give me about
16 decertification.

17 Q. Do you remember what exactly information you
18 asked him for?

19 A. There was a memo that I had seen in years
20 prior, that was like a Q&A of what -- well I don't
21 recall everything that's in the memo. But it was a
22 memo with basic questions about decertification.

23 Q. Anything else that you asked him for?

24 A. I don't know if it was our first -- When I --
25 Yes. I asked him for an updated roster.

1 Q. Mr. Sanderson, we've already discussed that
2 you provided an affidavit during the investigation
3 of this case. Do you recall stating in that
4 affidavit that you initially called HR
5 Representative Andy Stahel on or about February 9
6 of 2021?

7 A. That would be about the time frame, yeah.

8 MR. SPITZ: Brian, do you have an extra copy of
9 his affidavit?

10 MR. DOOLEY: I'll give it to you guys when
11 you're entitled to it.

12 MR. SPITZ: Well if you're referencing it, you
13 cross examining...

14 JUDGE WEDEKIND: I thought he already gave it
15 to him. He said he gave it to him.

16 MR. SPITZ: ... I am entitled to it.

17 MR. DOOLEY: Yeah, I thought Mr. Stahel had
18 already. I'm sorry...

19 MR. SPITZ: He did. I -- I don't

20 MR. DOOLEY: I thought he had already provided
21 it to you.

22 JUDGE WEDEKIND: Isn't he entitled to see it?

23 MR. DOOLEY: If I'm questioning about it?

24 JUDGE WEDEKIND: Yeah, I believe so. Alright.
25 Hold on. Let me look.

1 MR. DOOLEY: I don't think he's entitled to it
2 until cross, until from me, at least. I mean,
3 obviously they've seen it.

4 JUDGE WEDEKIND: Alright. Let's go off the
5 record.

6 *[Off the record]*

7 Q. BY MR. DOOLEY: Okay. Mr. Sanderson...

8 JUDGE WEDEKIND: For the record, the company
9 found a copy of the affidavit that the witness
10 provided. So the issue is moot.

11 MR. DOOLEY: Okay. Thank you, Your Honor.

12 Q. BY MR. DOOLEY: Mr. Sanderson, I can't remember
13 where we cut off there.

14 MR. FLYNN: February the 9th, I think, you asked
15 him about.

16 Q. BY MR. DOOLEY: So after that initial phone
17 call with Mr. Stahel, did you have any other
18 contact with him about the decertification?

19 A: BY THE WITNESS: Yes. Before I sent out the
20 email?

21 Q. Yes.

22 A. March 8th or 9th. The one we had already
23 brought up. I asked him for a updated email list.
24 I was a portion through creating mine through the
25 outlook page, and asked him if he could provide

1 that with the roster. I also asked if -- before I
2 sent out my first email, I sent it over to Andy to
3 make sure that it was in compliance with -- no, I'm
4 sorry. Two communications. I asked what -- how I
5 could communicate. I didn't want to break any
6 company guidelines, so I asked if I could
7 communicate on the company computer, or if I needed
8 to communicate on external email. What other
9 question in that communication? I don't recall.
10 It's the last one...

11 Q. Can you take a look at what's marked as 79?
12 Joint exhibit 79 in the binder there?

13 A. Right. Seventy...

14 MR. DOOLEY: It's going to be like the very
15 last one in there.

16 THE WITNESS: It is.

17 A. BY THE WITNESS: 78 appears to be the email.
18 79 is just the guidelines.

19 Q. BY MR. DOOLEY: That's correct. Thank you.
20 Okay, at number three there, can you explain what
21 you are asking for?

22 A. Yeah. I wanted a way to secure the collect
23 signatures without any potential tampering, or
24 other people seeing.

25 Q. And it appears just from looking at the

1 document that Mr. Stahel gave you permission to set
2 up a lock box?

3 A. Yes. Yes, he said I could set up a lock box.
4 There were some stipulations around it.

5 Q. Did you set up a lock box?

6 A. I did.

7 Q. When did you set that lock box up?

8 A. Right around the time I sent my first email.
9 I don't know if it was just before or just after or
10 same day. So, the March 8th or 9th time frame.

11 Q. Okay. It appears this email from Mr. Stahel
12 would have been March 6th, so it would have been
13 shortly after that. Is that correct?

14 A. Correct.

15 Q. Okay. Where did you set the lock box up?

16 A. At the entrance of Crude A shelter.

17 Q. Can you explain what the Crude A shelter is?

18 A. That's where operators stay on the unit that
19 they're working on.

20 JUDGE WEDEKIND: Can you spell -- the what?

21 THE WITNESS: Crude A? The letter A. Yes,
22 sir.

23 JUDGE WEDEKIND: It's crude, like C-R-U...

24 THE WITNESS: The crude oil.

25 JUDGE WEDEKIND: ...D-E. Correct, okay.

1 JUDGE WEDEKIND: Crude A. Crude A?

2 THE WITNESS: C-R-U-D-E

3 JUDGE WEDEKIND: Oh, sorry.

4 THE WITNESS: Just a capital A. Crude A.

5 Multiple crude distillation units at the refinery.

6 It's just, the A, we call it.

7 Q. BY MR. DOOLEY: What do operators do in that
8 room?

9 A. BY THE WITNESS: Write permits. Check people
10 in.

11 Q. So it's a working area?

12 A. Generally.

13 Q. How did you set up the lock box?

14 A. I attached it to the wall near the entrance
15 door.

16 Q. How did you attach it to the wall?

17 A. Two existing holes and two holes that I
18 drilled.

19 Q. So you drilled holes in the wall. Are you
20 aware of any other situation where employees have
21 been allowed to drill holes in the wall to set up a
22 fixture?

23 A. Sure. Yeah, any type of white boards or things
24 that are going to hang on the wall. It's all
25 cinder block walls. We put holes in them to hang

1 what is needed to be hung or what we want to hang
2 up in the shelter.

3 Q. Are you aware of anything -- anybody drilling
4 holes in the wall to hang something up for a non-
5 work related purpose?

6 A. Not holes in the wall for non-work, no.

7 Q. Hanging things on the wall for a non-work
8 related purpose?

9 A. Sure.

10 Q. Placing any kind of, you know, semi-permanent
11 box in the facility for a non-work purpose?

12 A. What's semi-permanent?

13 Q. Not easily movable.

14 A. I don't think so.

15 Q. How long did that lock box stay up?

16 A. I believe until we were locked out. Beyond
17 that, I don't know.

18 Q. Okay. Now you testified previously that you
19 had initially reached out to Mr. Stahel to ask him
20 if the company was serious about locking people
21 out. Can you take a look at -- What's in the
22 binder there is joint exhibit 4.

23 A. It's the email from, it looks like Blake to
24 Mark.

25 Q Yeah, and then there's another page with the

1 attachment, if you can flip over to the other side.

2 So Mr. Sanderson, what you're looking at here
3 is the respondent's lockout notice dated February
4 15th, 2021. I believe you previously testified that
5 you initially contacted Mr. Stahel around February
6 9. So were you aware at that point that the
7 respondent intended to lock employees out, or was
8 considering locking employees out?

9 A When was the strike notice filed?

10 Q If you want to flip to 3 in the binder
11 there...

12 A Okay.

13 Q ... it was the same date.

14 A. February 15th.

15 Q. Correct.

16 A. Okay, I'm sorry. So what's the question?

17 Q. Were you aware when you initially contacted
18 Mr. Stahel on February 9, 2021 that the company was
19 considering locking employees out?

20 A. I was aware that the company was preparing for
21 a work stoppage.

22 Q. How were you aware of that?

23 A. They'd been training since the previous
24 October with first lines, engineering, and other
25 employees training on the unit in preparation for

1 upcoming negotiations.

2 Q. Had Mr. Stahel or any other supervisor or
3 manager mentioned anything to you about a lockout
4 prior to February 9?

5 A. Apparently it wasn't mentioned on February 9.
6 I was worried about work stoppage in general
7 because they were training for it.

8 Q. Okay. So nobody had mentioned to you the
9 potential for a lockout specifically prior to
10 February 15?

11 A. Verbally, no. The actions by the company
12 showed that they were preparing to, I guess,
13 negotiate hard and be ready if they needed to be.

14 JUDGE WEDEKIND: So, when you asked Mr. Stahel
15 -- You asked him, right? You said you asked him
16 about a lock out.

17 THE WITNESS: I had at one point. It may not
18 have been on February 9.

19 JUDGE WEDEKIND: Okay.

20 THE WITNESS: Many conversations over a year or
21 more. We were locked out for over 9 months.

22 JUDGE WEDEKIND: And what did he say when you
23 asked him if there was going to be a lockout?

24 THE WITNESS: When I asked them about were they
25 prepared to lockout, which doesn't appear to be

1 February 9 at this point, he said the company is
2 prepared to follow through with its notice.

3 Q. BY MR. DOOLEY: How often were you in contact
4 with Mr. Stahel during the decertification effort?

5 A. BY THE WITNESS: The entire time? I went weeks
6 without talking to him sometimes and sometimes it
7 was almost daily calls as new information came up.
8 Roster changes happened and I was trying to keep up
9 with numbers.

10 Q. When did you actually file the petition for
11 decertification?

12 A. Late October.

13 MR DOOLEY: I have nothing further at this
14 time, Your Honor.

15 JUDGE WEDEKIND: Okay. Anything from you?

16 MR. FLYNN: Yes, Your Honor. Thank you.

17 DIRECT EXAMINATION

18 Q. BY MR. FLYNN: Mr. Sanderson, my name is
19 Patrick Flynn. I'm the outside counsel for the
20 USW. We've never met before. Is that correct?

21 A. BY THE WITNESS: I don't believe so.

22 Q. Did you get a subpoena from the general
23 counsel to come to court today?

24 A. Yes.

25 Q. You were here yesterday morning?

- 1 A. I was.
- 2 Q. Did you check in with Mr. Dooley?
- 3 A. We haven't ever spoken before.
- 4 Q. So, when you came in yesterday morning, you
- 5 were sitting on the back row.
- 6 A. I did.
- 7 Q. Who was sitting next to you?
- 8 A. I sat by Jason. I don't remember Jason's last
- 9 name. He was right there.
- 10 Q. Who's Jason?
- 11 A. He works at HR currently at ExxonMobil.
- 12 Q. And who else was there in the back on your
- 13 row?
- 14 A. Blake was next to Jason, and there was someone
- 15 else back there.
- 16 Q. Who is Blake?
- 17 A. Him. He used to work at HR in Beaumont.
- 18 Q. What's his last name?
- 19 A. I don't know.
- 20 Q. Do you have a cold? You're coughing a lot.
- 21 A. I'm sorry.
- 22 Q. I mean, you don't have anything -- No COVID, I
- 23 hope.
- 24 A. No, sir.
- 25 Q. Okay. You said you're stepped up now.

1 A. Correct.

2 Q. So you're in supervision now.

3 A. I am temporarily filling a supervision role.

4 I'm a wedge employee.

5 Q. Do you get paid for being in that step...

6 A. There's a percentage increase but it's paid
7 differently.

8 Q. Let me finish my question. Okay? Do you get paid
9 extra for being in that stepped up role?

10 A. Yes.

11 Q. And what does C-S-S stand for?

12 A. Console Shift Supervisor.

13 JUDGE WEDEKIND: That's the position you're
14 temporarily filling?

15 THE WITNESS: Yes, sir.

16 JUDGE WEDEKIND: Okay.

17 Q. BY MR. FLYNN: How long have you been in that
18 stepped up role?

19 A. I started training for it, I believe, in April
20 of last year. So 2022.

21 Q. When you're training, are you stepped up or is
22 there a period of time for training and then you
23 get stepped up?

24 A. I think -- No. I would say you're stepped up
25 when you start training because you have to do all

1 the paperwork for it before you can enter into that
2 position to eve start training it.

3 Q. You've been in that stepped up position since
4 April of 2022?

5 A. April or it may have been May. Yeah. April
6 or May of last year.

7 Q. Were you previously a dues paying member of
8 the local union?

9 A. I was. Yes.

10 Q. When did you stop paying dues?

11 A. 2015.

12 Q. About when? Do you know?

13 A. After we were not allowed to vote in 2015 on
14 the contract for months.

15 Q. So you were there during the 2015 bargaining
16 round?

17 A. I was.

18 Q. Did the union give the company some kind of
19 strike notice back then? And did the company give
20 the union some kind of lockout notice back then?

21 A. A strike notice was filed. I believe there was
22 a lockout notice filed. I think so.

23 Q. Okay. You didn't go on strike, though, did
24 you?

25 A. We didn't.

1 Q. There were other companies on strike in the
2 petro-chem industry at that time. Nationally.

3 A. In 2015? Yeah

4 MR. SCHUDROFF: Objection. Relevance.

5 JUDGE WEDEKIND: We've had testimony about this
6 issue before. Did you ask the questions or did the
7 company ask those questions?

8 MR. DOOLEY: I think both of us asked questions
9 with Mr. Morgan yesterday related to the 2015
10 bargaining.

11 MR. SCHUDROFF: I mean, (inaudible) the
12 appropriate witness.

13 JUDGE WEDEKIND: Overruled. Go ahead.

14 Q. BY MR. FLYNN: So, there was an industry wide
15 petro-chem strike.

16 A. BY THIS WITNESS: Portions of the industry,
17 from what I remember.

18 Q. And at that time, was your plant ExxonMobil in
19 Beaumont part of the national oil bargaining policy
20 for USW?

21 A. In 2015, yes.

22 Q. Okay. And you understand that the company
23 bargained out of that in 2015. Is that your
24 understanding?

25 A. What do you mean, bargained out of that?

1 Q. Are they in the national oil bargaining policy
2 program now?

3 A. Oh, yeah. No. The current contract -- we're
4 not pattern, I guess you would call it. Is what we
5 would have called it. Yes.

6 Q. So the company bargained out of that in 2015,
7 right?

8 A. The contract doesn't have...

9 Q. I mean, as far as you know.

10 A. Correct.

11 Q. Okay. You mentioned in your direct testimony
12 a couple of times, when Mr. Dooley asked you if you
13 ever met with anybody from the company prior to
14 your testimony. Do you remember him asking you that
15 question?

16 A. Yeah.

17 Q. You pointed, you said this group over here and
18 you know we have a court reporter that is taking
19 down the testimony. It'll come out in a little
20 booklet and it'll say this group over here and we
21 don't know who you're talking about. So could you
22 tell us in words, who is this group over here...

23 A. ExxonMobil.

24 Q. Let me finish my question, please, sir. Who
25 is this group over here that you met with prior to

1 your testimony here today? Go ahead.

2 A. ExxonMobil HR, ExxonMobil legal, and its --
3 third party legal.

4 Q. Do you know any of the names?

5 A. Blake, Jason, no, no, John I believe, no,
6 Craig, and Eva.

7 Q. What were the two no's? I don't know what
8 you...

9 A: I don't know.

10 Q. Oh. Okay. But they're here in the courtroom.

11 A. I recognize them, yes.

12 Q. Okay. When Mr. Dooley asked you if you gave a
13 copy of affidavit to anybody, you said, "they asked
14 me for my affidavit and I gave it to them." And
15 again, just for the record so we know who they are,
16 who are they? That asked you?

17 A. So the person in the room that physically
18 said, "Do you have a copy of that affidavit? Do you
19 mind sharing it?" was Andy.

20 Q. Okay. And approximately when was that, Mr.
21 Sanderson?

22 A. I believe in November of '22. November '22.

23 Q. Alright. And your recollection today is that
24 on or about February the 9th was the first time you
25 talked to anybody in company management or HR

1 position about your desire to start a
2 decertification drive. Is that true?

3 A. Yes.

4 Q. And that first person you talked to would have
5 been Mr. Stahel.

6 A. Correct.

7 Q. Andrew or Andy Stahel.

8 A. Yes.

9 Q. And he was in HR for the refinery there?

10 A. He was in the HR suite on the 3rd floor and he
11 was sending the emails. Some of those guys do
12 chemical plant, BP refinery. I don't know what his
13 role was at the time.

14 Q. Okay. But since he was the author of the
15 employee information bulletins...

16 A. Correct.

17 Q. ...that's why you went to him?

18 A. That's why I contacted him, correct.

19 Q. Did you do any research of your own before
20 February the 9th about decertification?

21 A. Before February 9th. Around that time. Before
22 or after February 9th, I do not know. Yeah, NLRB
23 website has a lot of information on it.

24 Q. Absolutely.

25 A. Yeah, so.

1 Q. So that's my question. Did you -- did you do
2 that before you talked to Mr. Stahel?

3 A. I don't remember if it was before or after. I
4 don't know.

5 Q. Any other internet research on that issue,
6 decertification, before you talked to Mr. Stahel?

7 A. Before or after, I re-- around that time.
8 When I expressed interest in general personally.

9 A. And so, tell us what you asked Mr. Stahel on
10 or about February 9th about decertification. What
11 did you ask him and what did he say?

12 A. Um, "could I have information about
13 decertification?" and, let's see, this was the
14 phone call. So, he made me say it multiple times,
15 "let me be clear, you are asking me for this." I
16 think that's all I asked him for. Or asked him
17 about on the phone.

18 Q. I don't quite understand what your question
19 was to him. I apologize.

20 A. "Can I have information about
21 decertification?"

22 Q. Oh, can you have information. Okay.

23 A. Yeah. Yeah.

24 Q. And what would make you think he would have
25 information about decertifying?

1 A. In 2015, a coworker had a memo that happens to
2 be the same one I received in -- what year is this?
3 -- 2021, that said, "hey, I got this. It's about
4 decertification." Someone else had looked into it
5 in 2015 is why I knew that there was a document.
6 They got it from HR. They said when they inquired
7 about decertification.

8 Q. Okay. And so, who was the author of that 2015
9 document?

10 A. I don't know. I believe it was identical to
11 the one I received in 2021. I don't know who
12 created it. I'm assume -- I was told it was
13 received from ExxonMobil HR.

14 Q. Right.

15 A. Right. That's what I was told. And so I
16 assumed that, well I just assumed that was accurate
17 at that point.

18 Q. And so...

19 MR. SCHUDROFF: Objection. Objection. Just
20 told when.

21 JUDGE WEDEKIND: Yeah, I wanted to clarify,
22 too. So when did you -- when did you find out
23 about this document about decertification?

24 THE WITNESS: The decert memo? In 2015...

25 JUDGE WEDEKIND: In 2015.

1 THE WITNESS: ...there was a coworker that had
2 inquired about it.

3 JUDGE WEDEKIND: Okay. And is that when you
4 were told where it came from?

5 THE WITNESS: They at that time told me where
6 they had received that document, yes.

7 JUDGE WEDEKIND: Okay. Is there a bottle of
8 water in here at all?

9 JUDGE WEDEKIND: There usually is.

10 MR. FLYNN: I can go get it.

11 MR. DOOLEY: There's a vending machine right
12 around the corner.

13 MR. FLYNN: We'll get it. We'll get you one.

14 THE WITNESS: Yeah, that'd be fine. Appreciate
15 it.

16 Q. BY MR. FLYNN: So, when you asked Mr. Stahel,
17 "Can you give me some information about
18 decertification?", did you say, "Hey, could you
19 give me that 2015 memo that I saw?"

20 A. BY THE WITNESS: I don't know. I don't recall.

21 Q. Okay. And he asked you a couple of times,
22 "You're asking me for this, right?"

23 A. Correct. Yeah. He clarified that -- He was
24 being defensive, it sounded like as far as making
25 sure he wasn't offering it to me.

1 Q. Sure. I mean he didn't -- he didn't want to
2 be soliciting for that. Right?

3 A. I don't know what he wanted.

4 Q. Well, so you don't know why he kept asking
5 you? Now you're asking me...

6 A. It was my presumption. Right. It was my
7 presumption that he did not want to be seen as
8 soliciting information to me.

9 Q. Sure. And, is that wrong in your view?

10 A. It's against standards, NLRB standards, I
11 believe for the company to solicit or attempt to
12 get a decertification started, yeah.

13 Q. And when you talked to him on February the 9th,
14 did you know that?

15 A. I don't believe so, no.

16 Q. Okay. That was the total extent of the phone
17 call. He asked you a few times, you know -- just
18 repeated, "you're asking me for this, right?"

19 A. Yeah. I asked him if he -- maybe I asked him
20 if he could email it to me. I asked him if he
21 could email it to me and he said, I believe the
22 answer may have been, "No." to that. But
23 ultimately, he made me come get it.

24 A. Okay, that's what I was going to ask you.

25 What else was discussed in the phone call. Take a

1 sip of water.

2 A. That was -- That was it. Yeah.

3 Q. Are you okay?

4 A. Yeah.

5 Q. Okay. So, you asked him to email it to you,

6 the information, because at that point you didn't

7 specifically ask for that 2015...

8 A. Yeah, I communicated to him to email it to me.

9 I don't know if I attempted to IM him that or if

10 that was on the phone call. So that was

11 communicated to him at that time.

12 Q. But you don't think you were asking him for

13 the 2015 memo, specifically?

14 A. I don't recall. I was asking him for

15 information.

16 Q. Okay. And he told you no he wasn't able to

17 email that to you?

18 A. He told me I needed to come -- he told me he

19 needed to see me in the HR suite if I would like to

20 get information.

21 Q. Did you ask him why? "Why can't you just

22 email it to me?"

23 A. I didn't I assumed because of the defensive

24 questions, it was potentially something they

25 weren't willing to email.

1 Q. So, when did you go to the office?

2 A. I may have the date in my affidavit. I don't
3 recall it off the top of my head right now.

4 Q. Could have been the same day or shortly
5 thereafter?

6 A. It was not the same day.

7 Q. Would that be fair?

8 A. Shortly after.

9 Q. Okay. And so tell us about that meeting. What
10 did you say and what did Mr. Stahel say? And was
11 anybody else present?

12 A. We were in a -- People were in and out.
13 Walked in and out of the room. It wasn't a private
14 room. It was, maybe like the HR lunch room. There
15 was an HR suite that has like cubicles in it, a
16 couple offices, and it's a room -- it's a room with
17 a big metal wall. I don't know if there's
18 documents that are -- I don't know. I was in a
19 room with a table, and a microwave, and a
20 refrigerator, and chips. That's what I remember.
21 And they asked me if I was a...

22 Q. Let me just interrupt. You said, "They asked
23 me." Who were they? Was there more than one
24 person?

25 A. No, no, no. I'm sorry. So Andy asked me.

1 I'm sorry. There were other people in and out of
2 the room. Warming food, grabbing chips, those
3 types of things.

4 Q. Okay so, as far as the conversation goes, it
5 was just you and Mr. Stahel talking.

6 A. Um-hum. Correct.

7 Q. Tell us the best you can recall, what did you
8 say and what did he say?

9 A. He asked me what I was there for. I presumed
10 to make me tell again that I was there for
11 decertification information. He held it up in his
12 hand and said, "You are asking me right now for
13 this information." I said, "Yes." At the time I
14 thought it was comical because it was so forced.
15 "Are you sure you're asking me for this." He gave
16 it to me. After he gave it to me, I asked him for
17 an updated roster. He said he didn't know if he
18 could give that to me. He'd get back to me.

19 Q. So he knew you were coming for the decert
20 information when you showed up?

21 A. Yeah. Yeah. Correct.

22 Q. Do you recall how those arrangements were
23 made? Because you said in the phone call on or
24 about the 9th, he said, "I can't email it to you,
25 but you can come and see me."

1 A. I don't recall. I don't know if it was IM or
2 on the phone call. I don't know if he gave me a
3 date or time then. I'm not sure.

4 Q. Okay. And IM would be an instant message?

5 A. Like an instant message on the computer. At
6 the time we, I don't know. Pick one of the
7 services, skype or, obviously not AOL at this time,
8 but. Whatever we used at the time in 2021.

9 Q. It was a company internal system.

10 A. Yeah, it was company internal messaging.

11 Q. Yeah. And so, you got the old 2015 memo? Is
12 that the information you got?

13 A. Well, I assume it was the same as the 2015
14 memo. It looked similar in structure. I don't
15 know if that was the same thing.

16 Q. Okay. And did it have who the author was on
17 there?

18 A. I'd have to look and see. I don't recall. It
19 was a Q&A sheet. It may in here if I need to peek
20 at it.

21 MR. FLYNN: Do we have it in -- Do we have an
22 exhibit in the book?

23 MR. DOOLEY: Which one?

24 MR. FLYNN: The Q&A's?

25 MR. DOOLEY: Yeah. Or no. No, it's not in but

1 I have it if we want to print it. If you want to
2 take a break and print now?

3 MR. FLYNN: No. We can just put it in later.

4 Q. BY MR. FLYNN: And so, he handed you this Q&A
5 document?

6 A. I believe it was in a manila envelope. I
7 don't know if I opened it in there or later, but
8 yes. That what was -- That's what I received that
9 day.

10 Q. Okay. Was there anything else discussed?

11 A. What I mentioned already. Asking for an
12 updated roster of represented employees, yeah.

13 Q. Okay. And do you recall when Mr. Stahel got
14 back to you about that question?

15 A. He did get back to me and I was provided an
16 updated list of the roster. I don't recall time
17 framing on that one.

18 Q. Now you mentioned that through the course of
19 your decertification activities, there were some
20 times that you talked to Mr. Stahel, like every
21 week or so and I'm...

22 A. Yeah. Yeah, there were times it was further
23 apart and there were times where it was daily or
24 almost daily.

25 Q. Several times a day?

1 A. Potentially, yes.

2 Q. Okay. Can you characterize those multiple
3 conversations in a general way without, you know,
4 going through conversation by conversation or week
5 by week, or month by month? What was the nature...

6 MR. SCHUDROFF: Objection.

7 Q. BY MR. FLYNN: ...of these multiple calls if
8 you can characterize them in a general way?

9 JUDGE WEDEKIND: If you could just hold on for
10 a second. Go ahead.

11 MR. SCHUDROFF: I'm just looking for a time
12 frame here.

13 JUDGE WEDEKIND: Just specify the time period
14 you're talking about.

15 MR. FLYNN: It would be after you got the Q&A
16 memo 'til -- I'm not sure. When you stopped
17 communicating with Mr. Stahel about the decert. I
18 guess it was when the election was over or you tell
19 us.

20 JUDGE WEDEKIND: Well first let's start with,
21 when with Mr. Stahel about the decert effort?

22 THE WITNESS: I don't know that I ever have
23 stopped.

24 JUDGE WEDEKIND: Okay. Why don't you just start
25 month by month or whatever? What was the time

1 period?

2 Q. BY MR. FLYNN: So on February 9th and then some
3 time thereafter you had the meeting with him. It
4 seems like the next conversation you had with him
5 was also sometime in February asking him, "Are
6 you"...

7 A. BY THE WITNESS: The in person meeting.

8 Q. Right. "You're serious about locking us out?"
9 or something like that...

10 MR. SPITZ: Objection. This mischaracterizes
11 his testimony.

12 JUDGE WEDEKIND: Yeah, I don't think -- he
13 hasn't talked about that at the meeting. Has he?
14 In the lunchroom? You're talking about the
15 lunchroom meeting?

16 MR. FLYNN: No, I think he finished the
17 lunchroom meeting.

18 JUDGE WEDEKIND: Okay.

19 MR. FLYNN: I was going to the next time he
20 talked to Mr. Stahel, I thought was sometime in
21 February.

22 Q. BY MR. FLYNN: You asked him something about
23 lockout. I'm not trying to put words in your
24 mouth. I'm asking you what you remember.

25 A. BY THE WITNESS: There was a time, and I don't

1 know the time frame, that I asked if they were
2 serious about locking us out. At the time, it may
3 not have even been to the point where a strike or
4 lockouts were filed, but it was getting to the
5 point where negotiations didn't appear well. And
6 the company was preparing for what appeared to be
7 work stoppage.

8 Q. Right.

9 A. Right. And yeah, that question was asked.

10 Q. So was that some time, do you think in
11 February? Or just not sure?

12 A. I'm -- You're asking me about a year and a
13 half ago. I don't know.

14 Q. Sure. I understand. So, in March, do you --
15 Can you remember the conversations month by month?

16 A. No. There's no chance. I wouldn't be able to
17 month by month remember.

18 Q. Okay. I didn't think so. That's why I was
19 asking you. You know. Let's just focus on 2021.
20 And let me ask you if you can tell us generally
21 what these conversations were with Mr. Stahel that
22 you had on a regular or irregular basis about the
23 decertification.

24 A. Yeah. Requesting information. Primarily. I
25 would contact him, "updated roster", "hey this

1 rumor's out from the union", "the union claims
2 we're never going to be locked out", "is lockout
3 really happening?", whatever rumor mill and or
4 current information was out at the time. For
5 clarity and or just requesting information like
6 roster lists.

7 Q. And did Mr. Stahel answer all your questions?

8 A. No.

9 Q. Well what kind of responses did you get from
10 him?

11 A. I think it was requests for information and
12 it's something he could provide, he provided it.
13 If was a request for information and it had to do
14 with negotiations sometimes he told me, "it's part
15 of negotiations. We can't talk about this." It
16 depends on the request in scenario.

17 Q. Okay. So for the things that he could answer,
18 can you recall those?

19 A. I received most of those via email. It was
20 requests for roster lists or requests for emails
21 for employees. Like a pre-built list.

22 Q. Did you get that?

23 A. I don't know that I got a pre-built list. I
24 got an updated roster list and I remember building
25 in Outlook. I don't know that I ever got the full

1 email list from him. I think they provided the
2 emails to me but they were just attached to name in
3 the roster list. It didn't do me any good, I still
4 had to go type them all in.

5 Q. How many times did you ask him for updated
6 rosters? It sounds like a lot.

7 A. So as -- so later on, not in March, but as
8 soon as the lockout occurred, there were people
9 that were quitting, people that were retiring. And
10 then as we progressed closer to actually getting
11 near 30%, it was -- there were times I was getting
12 a roster update once, twice, three times a week
13 from him. To see when I could file, if we were
14 going to hit the 30% mark.

15 Q. Did you tell Mr. Stahel why you need -- kept
16 needing all these rosters?

17 A. Yeah. To keep track of signatures. Make sure
18 that I'm keeping the correct numbers on them.

19 Q. Did you let him know when you got the 30%?

20 A. I told them after I filed. But it was
21 officially filed at that point.

22 Q. What did he say?

23 A. Surprised.

24 Q. Oh, he was surprised?

25 A. I think so, yeah. I mean, earlier that day

1 there was plenty of communication from the union
2 that, "We'll never reach it." and "There's no
3 chance you're getting 30%." I don't know that
4 there was a big surprise -- I don't know if there
5 was a general surprise from anyone on it. Well,
6 there might've been. I started doing a countdown
7 on the Facebook page saying how many signatures I
8 had left. You know, whether people believed it or
9 not. I don't know.

10 Q. So I guess Mr. Stahel believed the union
11 communications that said you're never going to get
12 the 30%.

13 A. I don't know what he believed.

14 Q. You said he was surprised.

15 A. I think he was, yeah.

16 Q. Now you mentioned this lockbox you put up.

17 Approximately when did you put that up, sir?

18 A. Around the time I sent the first email which
19 was the 8th or 9th.

20 Q. March?

21 A. March, I'm sorry. March 8th or 9th of 2021.

22 Q. And then I heard you say, I believe, that you
23 think it stayed up until the lockout which was May
24 of 2021. Right?

25 A. Yeah. I don't remember which day. Maybe it

1 was May 1st that we got locked out.

2 Q. Right.

3 A. But when I left it was still on the wall. So
4 beyond that time frame I obviously wasn't there. I
5 don't know.

6 Q. Okay. Well I was going to ask you why you
7 thought it stayed up until the lockout. I just
8 didn't know how you knew that.

9 A. I worked there. I worked in the shelter where
10 it is.

11 Q. Right. But I mean, you don't know if it was
12 taken down after the lockout?

13 A. Well when we came back to work it wasn't
14 there. The shelter had been remodeled. So at some
15 point it was taken down.

16 Q. Okay. That's all. Just trying to...

17 A. Okay.

18 Q. ...find out where your understanding came from
19 in response to counsel for the general counsel's
20 question about how long the lockbox was up. Did
21 you ever ask Mr. Stahel, "What did you do with my
22 lockbox?"

23 A. I didn't.

24 Q. You didn't?

25 A. Did not.

1 Q. Okay.

2 A. I don't know that he did anything with it.

3 They remodeled the shelter when we were out. I'm
4 assuming it got put in the trash bin somewhere.

5 Q. And 'they' again means the company?

6 A. I say 'they'. The company remodeled a lot of
7 the unit shelters when we were on lockout.

8 Q. So you're telling us that when you went back,
9 you noticed it was gone?

10 A. Correct.

11 Q. And you never asked anybody about it?

12 A. Correct.

13 Q. Okay. Now in addition to Mr. Stahel, did you
14 talk to any other members of management or
15 supervision with the company from the time you
16 first talked to Mr. Stahel on or about February 9th
17 until the day of the lockout, May 1, 2021, about
18 the decert?

19 A. No.

20 Q. Did you have any conversations with anybody
21 besides Mr. Stahel in management with the company
22 from May 1st until the time you filed the petition?

23 A. Did I have communication with anyone?

24 Q. About the decert? With anybody in management?

25 A. I don't believe so, no. I communicated with

1 my bosses that were there. Just asked them how
2 things were going. Every now and then one of them
3 would call and check up on us. Just our group of
4 employees.

5 Q. Sure. I'm just asking about the decert...

6 A. I don't believe so.

7 Q. I'm not trying to ask you about other stuff.

8 A. I don't believe so.

9 Q. Okay. So when you talked to these managers
10 that were checking up on you, did they ever ask you
11 anything about the decert?

12 A. No.

13 Q. Would they know you were involved in it?

14 A. I sent out the emails before we left, so I
15 think everybody probably knew, yeah.

16 Q. I mean, you didn't send email to the managers,
17 though, did you?

18 A. No. They got spread around pretty quick,
19 though.

20 Q. You know that, but no one ever said anything
21 to you? No manager ever acknowledged that you were
22 involved in the decert?

23 A. I don't believe so. Acknowledged? I don't
24 know.

25 Q. Well you said that you know the word got

1 spread around. I mean I guess, is there a reason?

2 Do you have some evidence of that?

3 A. The whole yard was talking about it.

4 Q. What's that?

5 A. The whole yard generally was speaking of the

6 negotiations, the decert. I mean, it was common

7 topic at the time in the yard.

8 Q. And supervisors were present during these

9 conversations. Is that how you think they would

10 have known about you?

11 A. I would assume so. I don't know. Yes.

12 Q. Okay.

13 JUDGE WEDEKIND: When you say the whole yard,

14 are you referring to not only...

15 THE WITNESS: I apologize. So ExxonMobil

16 Beaumont Refinery as a whole. So, yeah whether it

17 be bosses, employees, pipefitters, operators, the

18 entirety of the refinery. It wasn't --

19 Negotiations in general are not small events.

20 They're always the topic of conversation before

21 they happen and during.

22 JUDGE WEDEKIND: Okay, thank you.

23 MR. FLYNN: May I have just a little break,

24 Your Honor, to talk to the counsel?

25 JUDGE WEDEKIND: Sure. Off the record.

1 *[Off the record]*

2 JUDGE WEDEKIND: Any further questions for the
3 Union?

4 MR. FLYNN: Yes, Your Honor.

5 JUDGE WEDEKIND: Okay.

6 MR. FLYNN: I have a few more questions.

7 Q. BY MR. FLYNN: Mr. Sanderson, in those
8 conversations that you've told us about with Mr.
9 Stahel where you were requesting roster updates,
10 you recall those?

11 A. BY THE WITNESS: Yes.

12 Q. Okay. And you were -- I think you told us, and
13 I apologize if I'm repeating myself, but I want to
14 kind of clarify my own question and your answer,
15 you were needing those roster updates so that you
16 could keep track of your decert signatures to make
17 sure you were getting people who were still in the
18 unit?

19 A. Right. Decertification petition or the
20 showing of interest from that has to reach 30%.
21 It's 30% of the current represented employees, from
22 what I understand. Of the bargaining unit, I
23 believe it's called. And that changes as people
24 retire, quit. The number needed fluctuates with
25 that. To hit that 30%.

1 Q. Could you tell us just roughly your best
2 recollection of how many times you had to ask him
3 for those?

4 A. Oh, God. A lot. I don't have a number for
5 you. I mean it's...

6 Q. Would you say multiple times? Is that...

7 A. Easily.

8 Q. Is that okay?

9 A. Yes.

10 Q. And did you ever tell him why you kept asking
11 him for all that information? Or did he ask you?

12 A. I don't know that he asked me. I may have
13 shared. I don't -- I'm speculating at this point.
14 I don't recall conversations, all of them, right.
15 I don't know.

16 Q. No, I appreciate that. So, just to make sure
17 I understand, you don't recall whether he asked you
18 why you needed the information. Correct?

19 A. I don't believe -- Well I say, "I don't
20 believe" -- I don't know. I don't know.

21 Q. And I guess the answer would be the same as to
22 whether you...

23 A Can I clarify for you?

24 Q Sure.

25 A. Yeah, so, when I received the Q&A memo sheet

1 from him, after I initially contacted him, so
2 shortly after February 9th, I asked him for a roster
3 of represented employees. At that point, I believe
4 I expressed to him for decertification. If I
5 choose -- Because I hadn't decided at this point
6 that I was going to go forth with decertification.
7 So, if I choose to go forward with decertification,
8 I'd like an updated list.

9 So, yes, I would say I expressed to him why I
10 wanted those.

11 Q On your first exchange about that subject?

12 A I believe so, yeah.

13 Q. Okay, and I don't recall whether I asked you
14 or whether you told me, did you ever keep Mr.
15 Stahel informed of your numbers? Your progress on
16 your numbers.

17 A. All information I shared with numbers were
18 posted publicly on a Facebook page.

19 Q. My question to you is did you ever share that
20 with Mr. Stahel in one of these multiple
21 conversations?

22 A. I don't believe so.

23 Q. Did you ever tell him it was on your public
24 Facebook page?

25 A. I don't know.

1 Q. Did you and him ever talk about your Facebook
2 page?

3 A. I don't believe so. Wait, no. Let me take
4 that back. There were a time or two that I asked
5 him if information would get me in trouble, if I
6 posted it, with the company. Right? I mean, I'm
7 trying to protect my job...

8 Q. Absolutely.

9 A. ...and do the decert. So there were times
10 that I shared information with him, what I was
11 going to post, or thought about posting, and wanted
12 to make sure that it was not going to in any way
13 affect me disciplinary wise at work. Because from
14 my understanding, during a lockout or a strike,
15 there are still potential disciplinary actions that
16 can happen via company to employees.

17 Q. Yes. And do you recall what the subjects were
18 that you asked him to kind of clear for you?

19 A. I don't. No.

20 Q. In any of those cases, can you recall whether
21 he told you, "Well, that's okay. That's not a
22 problem." or, "Well no, you better not say that."

23 A He referred me back to them. There is use
24 guidelines with the company for just about
25 everything. Email, this obviously was an email.

1 There's conduct guidelines. He referred back to
2 those every time I had asked about something.

3 Repeat the question. Let me make sure I can
4 answer you right.

5 MR. FLYNN: Sure.

6 Q. BY MR. FLYNN: Were there ever any instances
7 where Mr. Stahel told you, in response to your
8 question about, you know, "Can I put this on my
9 Facebook page? I don't want to get in trouble with
10 the company." If I'm understanding you correctly...

11 A. BY THE WITNESS: Correct. Yes, yes.

12 Q. Where you remember Mr. Stahel telling you,
13 "Well, no. I don't think you ought to post that."
14 Or to the contrary, "Yeah, that's fine. Go ahead."
15 Just like he said in the...

16 A. He never told me what to post. It was

17 Q. I didn't finish my question, and that wasn't
18 exactly my question. But what I was saying is,
19 like he told you in the email -- You sent him an
20 email and said, "Can I do this?" and "Can I do
21 that?" and we have that in evidence in one of the
22 joint exhibits, I think you looked at a minute ago.
23 Right?

24 THE WITNESS: Point me at it so I can answer
25 correctly.

1 MR. FLYNN: I don't remember which one it is.
2 Is it...

3 MS. SHAPIRO: 78?

4 MR. FLYNN: 78? You actually pointed out the
5 email a minute ago.

6 I think it was the March, early March, where
7 you sent him, I think, 3 questions.

8 THE WITNESS: Okay, yeah.

9 Q. BY MR. FLYNN: Which one is that?

10 A. BY THE WITNESS: 78 with an arrow.

11 Q. Okay and so, in that instance you asked him
12 three questions and he gave you three answers.
13 Right?

14 A. Yes.

15 Q. Okay. So, my question is, when you asked him
16 about posting something, because you were not sure
17 whether you were going to get in any trouble with
18 the company, and again I'm just paraphrasing, okay.

19 The record will speak for itself as to what
20 you said that you said to Mr. Stahel. I'm not
21 trying to change anything.

22 So, when you had that kind of conversation, do
23 you recall whether there were any incidences where
24 Mr. Stahel said, "Hey, that's fine. That's not a
25 problem. You can post that." Let's just start

1 with one at a time.

2 Go ahead.

3 A. His responses to all of those questions were
4 identical or very similar to an email he sent me.
5 Just so I can be clear, the first email I was going
6 to send out to the represented employees, on March
7 8th or 9th, that first email I sent, I pre-sent that
8 email to Mr. Stahel and said, "Does this meet the
9 guidelines?" And he just simply referred me back to
10 the guidelines and said he -- maybe he said he
11 can't comment on content. And that was the
12 response, consistently, from him.

13 Q. Okay. So, did you follow that process of like
14 pre-sending things to Mr. Stahel for all the emails
15 that you sent out?

16 A. No.

17 Q. How many times did you do that? If you can
18 remember.

19 A. If not just the first one, maybe just the
20 first two. I don't believe I sent any of the other
21 ones to him.

22 Q. Okay. And I thought we were talking about
23 contacting Mr. Stahel before you put something on
24 your Facebook page. Is that a misunderstanding on
25 my part?

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1 A. No. We can carry that same thing I said into
2 the Facebook posts and say that I did send a couple
3 to him. I don't know how many. Not all. Not even
4 the majority. At some point, I said, "hey is
5 this"-- things that I may have questioned. Is
6 this a borderline post as far as the company is
7 concerned? Right? And I received the same response
8 that I've described to you about the emails. He
9 can't comment on content and to refer back to the
10 guidelines basically, yeah.

11 Q. Okay. So there weren't any emails that you
12 had with him where he said 'yes' or 'no'?

13 A. I don't believe so.

14 Q. Right, okay...

15 MR. SCHUDROFF: Objection. The grounds are --
16 I'm sorry. The objection is to the relevance
17 because the allegation in the complaint paragraph
18 7.A is that about March 6, 2021, Respondent by
19 Andrew Stahel permitted Brian Sanderson to fasten
20 and affix a lockbox on his property at the Beaumont
21 facility for employees to deposit signed
22 decertification and or disaffection petitions.

23 These questions that counsel are now -- is now
24 asking go well beyond the scope of this complaint
25 allegation.

1 JUDGE WEDEKIND: General counsel? What's your
2 position?

3 MR. DOOLEY: Your Honor, there's no allegation
4 that the company allowing him to use the company's
5 email system was unlawful in this case, if that
6 answers your question. But we do have some
7 concerns just about the -- you know, the extent of
8 Mr. Sanderson's communications with Mr. Stahel,
9 obviously.

10 MR. SCHUDROFF: Which were not put in the
11 complaint.

12 MR. DOOLEY: I mean, the extent of the
13 communications between, you know, representatives
14 of Respondent and Mr. Sanderson during the process
15 just goes to our overall theory that the lockout
16 was intended in part to support the decertification
17 effort.

18 JUDGE WEDEKIND: Well that's what I'm focusing
19 on.

20 So, you have a separate -- you have separate
21 allegations about the lockout being in (inaudible)
22 of the decert effort?

23 MR. DOOLEY: Correct.

24 JUDGE WEDEKIND: And then you have this 8(a)1
25 assistance to the decert effort which would have

1 converted the lockout. And that's where you list
2 what was just mentioned.

3 MR. DOOLEY: The lockbox?

4 JUDGE WEDEKIND: Yeah, you mentioned certain
5 things. That's actually a separate -- paragraph 7.
6 Yeah, the lockbox.

7 MR. DOOLEY: Correct.

8 JUDGE WEDEKIND: And then you have paragraph
9 11, which I believe is what -- Mr. Stanley? Was
10 referring to. That's what you said?

11 MR. SCHUDROFF: Oh, I'm sorry. I'm just -- I'm
12 Dan Schudroff. My apologies, I switched seats...

13 JUDGE WEDEKIND: I told you not to switch
14 seats.

15 (laughter)

16 MR. SCHUDROFF: My apologies.

17 JUDGE WEDEKIND: Alright, anyway...

18 MR. SCHUDROFF: My apologies, Your Honor.

19 JUDGE WEDEKIND: So, what the bottom line is,
20 the general counsel nowhere in this complaint is
21 alleging that it was unlawful. That they let him
22 use, let the witness use the business email.

23 MR. DOOLEY: That's correct. There was no
24 finding of violation on use of the employer's email
25 system as a (inaudible) violation.

1 JUDGE WEDEKIND: Okay, so...

2 MR. SCHUDROFF: And just to be clear, Your
3 Honor, I'm sorry. That was a charge allegation
4 which either was dismissed or withdrawn.

5 JUDGE WEDEKIND: Okay. And so you're not going
6 to rely on that in any way as evidence that the
7 lockout was motivated...

8 MR. DOOLEY: Not just that -- the pure fact
9 that he was using the company's email system.
10 Again, his communications Stahel directly are going
11 to be relevant, obviously. But his communications
12 with other employees about the lockout using the
13 company's email system, that part, we are not
14 concerned with.

15 JUDGE WEDEKIND: Well, why is it obvious that
16 his communications with Stahel are relevant?

17 MR. DOOLEY: Well Stahel (inaudible- coughing)
18 representative.

19 JUDGE WEDEKIND: No, I understand, but why is
20 that...

21 COURT REPORTER: Can you repeat that?

22 JUDGE WEDEKIND: The coughing, yeah.

23 MR. DOOLEY: Andrew Stahel is an HR
24 representative. And the reason Mr. Sanderson's
25 communications with him are relevant is obviously

1 because, you know, part of our theory in this case
2 is that one respondent was assisting with the
3 decertification effort and two the lockout was tied
4 to the decertification effort.

5 JUDGE WEDEKIND: But there's nowhere in that
6 complaint does it allege that Mr. Stahel did
7 anything during a conversation with the witness
8 that constituted an unlawful assistance. That's
9 the point, right? That's the -- These questions...

10 MR. DOOLEY: Well, he allowed him to set up the
11 lockbox. He's the one who expressly gave him
12 permission to set up the lockbox. And, you know,
13 the complaint allegations are there. Obviously we
14 want to explore the extent of these communications.
15 We received, you know, responsive documents through
16 the subpoena and there are still outstanding
17 responsive documents that the subpoena -- You know,
18 we want to explore these issues to make sure
19 there's nothing else there that we didn't catch
20 during the investigation.

21 JUDGE WEDEKIND: Okay. Are you almost done, by
22 the way?

23 MR. FLYNN: Yes, sir.

24 JUDGE WEDEKIND: The objection was a little
25 late, I think. And we already have all this in.

1 So it seems to me that we have enough about that
2 issue. Because it's not directly plead in the
3 complaint. It's not clear to me that anything so
4 far -- at least the general counsel is not going to
5 argue -- it's not clear whether the general counsel
6 is going to argue that anything that you elicited
7 so far is going to support the allegation. The
8 allegations in the complaint.

9 So, are you done with this line of
10 questioning? Or did you have something else?

11 MR. FLYNN: I was done asking him about the
12 email between him and Mr. Stahel but I want to ask
13 him about the conversations that were separate
14 apart from the emails.

15 JUDGE WEDEKIND: Okay. For what purpose?

16 MR. FLYNN: Well, to find out more about what
17 the company's involvement was in the
18 decertification campaign.

19 JUDGE WEDEKIND: Okay, I think I'm going to
20 allow it. Not necessarily -- It may not be
21 directly relevant, but there are other issues in
22 these proceedings besides the actual allegations.
23 Right?

24 MR. SCHUDROFF: There are other complaint
25 allegations, but again...

1 JUDGE WEDEKIND: Well I mean it -- In terms of
2 -- It's clearly related. I'm going to allow it for
3 that reason.

4 MR. SCHUDROFF: I'm sorry, Your Honor. Just
5 clearly related to it from...

6 JUDGE WEDEKIND: To the allegations in the
7 complaint. It's the same time period -- we're
8 going to have witnesses testify and it may be
9 relevant to the credibility of some of the
10 witnesses.

11 Go ahead.

12 MR. FLYNN: Thank you, Your Honor.

13 Q. BY MR. FLYNN: Mr. Sanderson, we were talking
14 about the email exchange you had with Mr. Stahel
15 where you were pre-sending him emails that you sent
16 to the bargaining unit or pre-sending him posts
17 that you put on your Facebook page, okay? And you
18 already told us what you discussed in the emails.
19 My question about that subject is were there any
20 phone conversations about those subjects?

21 A. BY THE WITNESS: Probably, yeah. Sure.

22 Q. And do you remember what you said and what he
23 said?

24 A. No, I don't remember the specifics of phone
25 conversations. Typically if I had a request via a

1 phone call he would tell me to put it in writing.
2 I would either email and or text him the requests.
3 If it was something he could provide, he would
4 provide it to me.

5 Q. Okay. As far as providing you something, you
6 had mentioned you had asked him questions about
7 negotiations and he told you he couldn't talk about
8 that?

9 A. Depending on the question and answer. Well,
10 depending on the question. Depends on what it --
11 Some answers were yes, some were no, right?

12 Q. So he did give you some information about
13 negotiations?

14 A. I think -- If he was actively involved in
15 something that was not complete or something the
16 company wasn't prepared to send out a notice on, I
17 was generally told no.

18 Q. Did he send you copies of any of the union's
19 proposals from...

20 A. I don't remember. I received a copy of more
21 than one proposal from the company and the union,
22 but I don't remember if it was through Andy or if
23 it was through a coworker that obtained them from
24 someone else.

25 Q. Okay. And I think you had mentioned that you

1 gave your affidavit to Mr. Stahel back, was it
2 November of 2022?

3 A. I'm making the educated guess of November.

4 MR. SCHUDROFF: Objection. This now goes
5 beyond the scope of the -- what was sustained
6 before. Or what was permitted.

7 JUDGE WEDEKIND: What was the question again?

8 MR. FLYNN: I was just -- I have some
9 additional questions about his meetings with the
10 company and I believe he said he gave the affidavit
11 to Mr. Stahel in November of 2022. Whatever the
12 record says. I'm not re-asking him that question,
13 I'm just using that date as a marker.

14 JUDGE WEDEKIND: For what question? For what?

15 MR. FLYNN: To ask him about other meetings
16 he's had about his testimony with the company
17 representatives.

18 JUDGE WEDEKIND: Okay, and why are you asking
19 him that? We have an objection, just tell me why
20 you're asking. We have an objection to your
21 question, so. Right?

22 MR. SCHUDROFF: Yes.

23 JUDGE WEDEKIND: Alright, so. What's your
24 response?

25 MR. FLYNN: Well, Your Honor, I asked him

1 previously, when he testified that he met with the
2 company lawyers, and there was no objection to that
3 question. I just am following up on that. I left
4 off some other questions about how many times did
5 he meet? How long did he meet? That's...

6 JUDGE WEDEKIND: Okay, and when -- What's your
7 objection?

8 MR. SCHUDROFF: I think that was already asked
9 and answered on general counsel's case in the
10 examination of this witness.

11 JUDGE WEDEKIND: Well, yeah, there was some.
12 I'm going to overrule the objection for now. Again
13 it goes to what the witness -- I don't need to get
14 any more detail. Go ahead.

15 MR. FLYNN: Thank you, Your Honor.

16 Q. BY MR. FLYNN: Mr. Sanderson, you'd mentioned
17 that you'd given the affidavit, I believe to Mr.
18 Stahel, back in November of last year. And that
19 was the first meeting you had about your NLRB
20 testimony. Is that my understanding?

21 THE WITNESS: What do you mean, NLRB testimony?

22 MR. FLYNN: Well you gave a copy of your
23 affidavit...

24 THE WITNESS: So we're calling the affidavit
25 the NLRB testimony?

1 MR. FLYNN: Yes.

2 A. BY THE WITNESS: Okay, yes. Correct.

3 Q. BY MR. FLYNN: Okay. And so, from that date up
4 until today, have you had any other meetings with
5 the company representatives about your testimony
6 here today?

7 MR. SCHUDROFF: Objection. What is the
8 relevancy of these questions?

9 JUDGE WEDEKIND: It's just that -- It's
10 obvious, right? Would you want to have the witness
11 step out? Should we have the witness step out?

12 MR. SCHUDROFF: Please.

13 JUDGE WEDEKIND: Okay.

14 Would you mind stepping out for a minute?

15 Okay. It goes to bias. Credibility. I mean
16 that's obvious...

17 MR. SCHUDROFF: Okay, fair enough.

18 JUDGE WEDEKIND: Can you bring him back?

19 MR. DOOLEY: Thanks, Your Honor. Oh, you got
20 it, Mark? Thank you.

21 JUDGE WEDEKIND: Okay. You can continue.

22 We have a relevance objection overruled.

23 MR. FLYNN: You probably forgot the question.
24 Or maybe not.

25 THE WITNESS: Give me a little more credit than

1 that.

2 MR. FLYNN: Okay. Good.

3 THE WITNESS: No, no. Please ask again. Make
4 sure I'm answering the right thing.

5 Q. BY MR. FLYNN: Again, we talked about when you
6 gave Mr. Stahel your affidavit back around November
7 of last year. There was nobody else present for
8 that meeting. Correct?

9 A. BY THE WITNESS: No, that -- most of these
10 people were, that you had me name earlier.

11 Q. Oh, okay. The company lawyers.

12 A. Sure.

13 MR. SPITZ: Only because there was a meeting in
14 November 2022? Just want to make sure he's --
15 we're all clear on what he's answering. It's
16 gotten a little jumbled.

17 MR. FLYNN: Yeah, the November '22 when you
18 gave the affidavit, there were -- the company
19 lawyers and Mr. Stahel were there.

20 A. Correct. Yes.

21 Q. Okay. And where did you all meet?

22 MR. SPITZ: You know what? I'm sorry. Can we
23 excuse the witness for one second?

24 JUDGE WEDEKIND: Sure. Would you mind stepping
25 out again?

1 MR. SPITZ: So I -- Look, I mean, I guess this
2 goes to -- I mean, we can clear it up on redirect
3 or whatever, but you guys have an email that he
4 sent to Mr. -- Okay. Alright. I'm sorry. I..

5 JUDGE WEDEKIND: Okay.

6 MR. SPITZ: We withdraw that and we can...

7 MR. DOOLEY: Is there an email we don't have?

8 MR. SPITZ: There is -- we responded in full to
9 your subpoena.

10 MR. DOOLEY: Can you...

11 MR. SPITZ: No.

12 MR. DOOLEY: Are you claiming privilege as
13 to...

14 MR. SPITZ: No, not at all.

15 MR. DOOLEY: ...some email? So there's no
16 email?

17 MR. SPITZ: Take a look at -- take a look at
18 your subpoena. We have represented that we
19 responded in full to your subpoena.

20 MR. DOOLEY: Well my understanding, and I
21 brought this up to Stanley just briefly a few
22 minutes ago, Mr. Sanderson mentioned some instant
23 messages with Mr. Stahel by skype or some kind of
24 other messaging system. I haven't seen those. It
25 sounds like there might be some email that wasn't

1 produced.

2 MR. SPITZ: There was -- I am representing to
3 you 100% that we responded with 100% with the
4 emails that you requested within the scope of your
5 subpoena.

6 MR. DOOLEY: I guess I'll just have to take
7 your word for it. The instant messages, are those
8 something we can...

9 MR. SPITZ: The instant messages we could
10 explore. I don't know that those are preserved and
11 honestly I didn't know anything about instant
12 messages.

13 MR. DOOLEY: Okay. And I understand the text
14 messages between Sanderson and Mr. Stahel, we will
15 be getting at some point.

16 MR. SPITZ: That you will be getting.

17 MR. DOOLEY: Okay.

18 JUDGE WEDEKIND: Okay, so there is attorney
19 client objection?

20 MR. SPITZ: No, no we're not claiming...

21 JUDGE WEDEKIND: Okay. We can bring him back
22 in. Thanks. Alright, so. Continue.

23 MR. FLYNN: Thank you, Your Honor.

24 Q. BY MR. FLYNN: Mr. Sanderson, now back to this
25 meeting when you gave the company representatives,

1 the lawyers, and Mr. Stahel your affidavit, do you
2 recall approximately how long that meeting was?

3 A. BY THE WITNESS: I don't. An hour-ish.

4 Q. And where was it located?

5 A. At ExxonMobil. In their -- they call it the
6 Bob. Their main office building.

7 Q. Okay. And do you recall the discussion?

8 A. They were -- This was a post filing
9 decertification effort, which happened in October.
10 They asked me questions about -- There were a bunch
11 of NLRB cases open. I believe all the questions
12 were associated with NLRB allegations at that
13 point. They questioned me about those.

14 Q. And have you had any other meetings between
15 then and today...

16 A. Yes.

17 Q. ...with the company lawyers?

18 A. Yes.

19 Q. How many?

20 A. Two.

21 Q. And when were they?

22 A. The most recent was February 8th or 9th,
23 whichever one of those is a Thursday, of this year.
24 Mr. Dooley had emailed me and that was the day I
25 was available to meet with folks. They asked first

1 so I ended up there. Prior to that,

2 JUDGE WEDEKIND: 'They' meaning? I'm sorry
3 just...

4 THE WITNESS: I apologize. I'm sorry.
5 ExxonMobil attorneys.

6 JUDGE WEDEKIND: Okay. They asked you first to
7 do what?

8 THE WITNESS: There's obviously two
9 subpoenas...

10 JUDGE WEDEKIND: Okay.

11 THE WITNESS: One from, I believe it's --
12 Jackson Lewis is the firm that sent it. And one
13 from, I believe, Mr. Dooley is the one that signed
14 on that one.

15 MR. DOOLEY: It's signed by the general counsel
16 but it was issued...

17 THE WITNESS: Yeah, the NLRB.

18 MR. DOOLEY: ...by our office. Yeah.

19 THE WITNESS: I apologize. And then both
20 parties reached out to me at different times and
21 asked if I could have discussions about today.

22 JUDGE WEDEKIND: Okay. Thank you.

23 Q. BY MR. FLYNN: So, you said the company...

24 A. BY THE WITNESS: There was one more meeting I
25 didn't tell you the time frame on. It was in

1 Beaumont. It was at Exxon. It was prior to
2 February 9th. I do not remember the time frame on
3 it.

4 Q. Okay, well let's just go to the February 8 or
5 9 meeting. You said you got a subpoena from the
6 company and from the counsel to the general
7 counsel.

8 A. NLRB.

9 Q. Right.

10 A. Yes. Okay.

11 Q. They both contacted you to talk?

12 A. Yes.

13 Q. In person, I guess. Or by Zoom or something.

14 A. Initially, by -- seen by a person initially,
15 and Mr. Dooley offered zoom towards the end of the
16 email exchange.

17 Q. Because the company contacted you first, you
18 met with the company lawyers?

19 A. Well I was already meeting with the company
20 when Mr. Dooley asked or when I responded back and
21 said, "Hey, I'm meeting. At this day at this time,
22 I'm available this day." He was unavailable.

23 Meeting in, I think a different location at the
24 time. He emailed me another time frame. I was
25 working so I was unavailable. He emailed me

1 another opportunity to zoom. I didn't respond back
2 to that one. I was working that day also.

3 Q. Okay, so. I'm a little fuzzy about your
4 answer about -- I thought you said the company
5 asked you first so met with them.

6 A. Well I had already had theirs scheduled by the
7 time Mr. Dooley -- is it Mr. Dooley?

8 MR. DOOLEY: Yes.

9 THE WITNESS: I apologize.

10 A. BY THE WITNESS: When he emailed me, I had just
11 set up a time to meet with them.

12 Q. BY MR. FLYNN: And you just described to -- for
13 us that you had not met with Mr. Dooley at all.

14 A. Correct.

15 Q. Okay. So, what was discussed in this meeting
16 on February 8 and 9 with the company lawyers?

17 A. They told me what was the general setup of
18 what was going to happen today. And then they
19 asked me a pile of questions. A large quantity of
20 questions. A pile of questions. I'm sorry. A
21 large quantity of questions about the events that
22 we're talking about today.

23 Q. Was there anybody in the meeting besides the
24 lawyers? Was Mr. Stahel there?

25 A. Andy? Yeah, Mr. Stahel. Blake. That might

1 be it from the company. The rest may have just
2 been attorneys.

3 Q. Okay.

4 A. I believe that's right.

5 Q. Approximately how long was that meeting?

6 A. Four hours.

7 Q. And that was located where?

8 A. ExxonMobil, they call it the corporate campus,
9 it was in.

10 Q. Is that in Spring, Texas?

11 A. I believe it was Spring. North of Houston,
12 yes.

13 Q. Okay. And then you had one other meeting in
14 Beaumont?

15 A. Prior to that time.

16 Q. Would you put that in January? Or December?

17 A. I'm not giving you a date because I don't have
18 a reliable answer at this point.

19 Q. Okay. That's fine.

20 A. Yeah, I'm sorry.

21 Q. It's fine. Who was in that meeting?

22 A. I'm trying to see if I -- if everyone was
23 here. So, not everyone I see today. So I know
24 Blake and Andy were there. And maybe Jason from
25 HR, I'm not sure. And most of the legal team that

1 we referred to.

2 Q. Okay. Approximately how long was that
3 meeting?

4 A. I don't recall. I don't -- an hour -- I --
5 you know what? I don't know. I'm sorry.

6 MR. FLYNN: Alright. I'll pass the witness,
7 Your Honor.

8 JUDGE WEDEKIND: Okay.

9 MR. SCHUDROFF: Could we take 5?

10 JUDGE WEDEKIND: Sure, yeah.

11 MR. SPITZ: Before we do that do you have any
12 affidavits that touch on this testimony from other
13 cases. We only have the one dated May 7.

14 MR. DOOLEY: That's the only one that's
15 directly related to these cases that I'm aware of.

16 JUDGE WEDEKIND: Do you want to ask the witness
17 any question about affidavits? Do you want any
18 more information about this?

19 MR. SPITZ: What we -- I mean I think he's
20 provided other affidavits. I know he was involved
21 in other charges. I don't know that for sure. I
22 suppose it's really -- The onus is on the general
23 counsel to do a thorough search of his files before
24 a witness testifies to produce affidavits of any
25 matter at issue in a hearing.

1 MR. DOOLEY: So this is, again, the only one
2 that's directly relevant to the complaint
3 allegations. There were other charges, obviously,
4 that aren't directly relevant here. And I can
5 print these all again like we did yesterday and
6 have the judge review them if we want to go down
7 that road.

8 MR. SCHUDROFF: I guess, Your Honor, I just
9 don't know what I don't know. I mean, it's -- I
10 mean 'directly relevant' is a little bit of a
11 loaded term. Are they indirectly relevant? Are
12 they somewhat relevant?

13 MR. DOOLEY: I mean, you asked -- Mr.
14 Sanderson, did you provide any other affidavits to
15 the company?

16 THE WITNESS: My answer would --

17 JUDGE WEDEKIND: To the company?

18 MR. DOOLEY: Yes...

19 JUDGE WEDEKIND: Or to the NLRB?

20 MR. DOOLEY: To the Respondent -- did you
21 provide any other affidavits that you gave to the
22 NLRB to Respondent's supervisors, HR, attorneys?

23 THE WITNESS: Affidavits I've given the NLRB.
24 You're asking if I've given them to...

25 MR. DOOLEY: Yes.

1 THE WITNESS: ...ExxonMobil. I believe this is
2 the only one.

3 MR. DOOLEY: Okay.

4 JUDGE WEDEKIND: What do you want me to do?

5 MR. SPITZ: I don't know, I mean. It -- I don't
6 know if -- we don't know if the affidavit is -- I
7 mean, I don't want to waste everybody's time, but
8 on the other hand, Mr. Dooley said they're not
9 directly relevant. If he said they are not
10 relevant I'd -- might feel a little differently.
11 But, "they're not directly relevant." is a little
12 bit of a loaded phrase.

13 JUDGE WEDEKIND: I don't know how many
14 affidavits there are. I don't know when these
15 cases occurred. Were they ten years ago?

16 MR. SPITZ: Oh, no. They were all within the
17 relevant -- I wouldn't ask for anything outside of
18 that one year period.

19 JUDGE WEDEKIND: Okay.

20 MR. SPITZ: Not -- truly not trying to be
21 difficult.

22 JUDGE WEDEKIND: No, I understand.

23 MR. DOOLEY: No, I'm actually not showing -- I
24 was thinking he gave one, at least one, in
25 conjunction with one of the CV charges but this is

1 the only one that I'm showing. So I think we're
2 all squared away.

3 JUDGE WEDEKIND: Can we just ask the witness?

4 MR. DOOLEY: Yeah, do you remember if you...

5 JUDGE WEDEKIND: How many NLRB affidavits have
6 you given?

7 THE WITNESS: NLRB has questioned me multiple
8 times, but I believe that's the only affidavit I've
9 signed and sent in.

10 MR. DOOLEY: Okay. That's sound...

11 JUDGE WEDEKIND: That helps, then.

12 Alright, let's go off the record. Do you still
13 want five?

14 MR. SPITZ: Five.

15 *[off the record]*

16 JUDGE WEDEKIND: Alright, any requests?

17 MR. SCHUDROFF: Yes, Your Honor. An inquire?

18 JUDGE WEDEKIND: Sure.

19 CROSS EXAMINATION

20 MR. SCHUDROFF: Good morning, Mr. Sanderson.
21 My name is Daniel Schudroff. I'm counsel for the
22 company.

23 Q. BY MR. SCHUDROFF: On direct examination, you
24 testified that you've worked at the Beaumont Exxon
25 site since 2012?

1 A. BY THE WITNESS: I didn't give a date, but it
2 was 2012. April, I believe.

3 Q. And your current position is a stepped up
4 supervisor, right?

5 A. Correct.

6 Q. How -- Do you happen to know, how many stepped
7 up supervisors are there at the Beaumont facility
8 right now?

9 A. I don't know. I don't have a direct number.
10 It's a lot. Mechanical's got a large portion of
11 it. We have a lot of step ups in the CCB right
12 now.

13 Q. Is it more than ten?

14 A. Yes, easily.

15 Q. More than twenty?

16 A. Speculating, but I would venture to say so.
17 Yes.

18 Q. More than thirty?

19 A. Potentially.

20 Q. As a step up supervisor, are you in the
21 bargaining unit represented by Local 13-243?

22 A. Yes.

23 Q. You may have mentioned this during the direct
24 examination, but are you a dues paying member of
25 the union?

1 A. Not currently.

2 Q. When, if at all, were you a dues paying member
3 of the union?

4 A. From 6 months post hire date, which is normal,
5 til 2015. So approximately three years.

6 Q. Why did you stop paying dues in 2015?

7 A. Negotiations were dragging on and the
8 remaining requests to vote, to be heard, as a union
9 member. Those were denied and not allowed, so. I
10 figured if I couldn't vote I wasn't going to pay
11 them.

12 Q. Vote on what?

13 A. I'm sorry. Have a chance to vote on a
14 contract. Any contract.

15 Q. At the time, back in 2015, did other
16 bargaining unit employees share this similar
17 sentiment with you?

18 A. Wanted to have their voice heard? Yes. Being
19 able to vote.

20 Q. Mr. Sanderson, during the direct examination,
21 you were asked about a meeting between you and Mr.
22 Andy Stahel on February 9, 2021. Do you --

23 February 9, 2021. Do you remember that testimony?

24 A. It was a phone call. Yes.

25 Q. A phone call? Did you meet with Mr. Stahel

1 after that phone call?

2 A. Shortly after.

3 Q. Okay. When you physically met with Mr.
4 Stahel, who initiated the dialogue between the two
5 of you?

6 A. I did.

7 Q. Mr. Sanderson, why did you initiate this
8 meeting with Mr. Stahel?

9 A. Concerns that things were going to be worse
10 than 2015. Not just an extremely late contract,
11 but that there would be a work stoppage.

12 Q. And what gave you that impression?

13 A. The company appeared to be more prepared in
14 2021, wait, twenty -- 2021. Sorry. Make sure my
15 dates were right. In 2021 for a work stoppage than
16 they were in 2015. In 2015 there was a -- There
17 appeared to be, I don't know, some tension, but it
18 didn't seem to be as -- The company didn't have
19 people training from, I guess the previous October
20 like I've mentioned, to make sure they could do our
21 jobs if we weren't there.

22 Q. Okay, any other things that you saw that gave
23 you that impression?

24 A. Negotiations were going poorly. The company
25 put up their offers. The union -- I don't -- I was

1 concerned because it didn't look like the union put
2 a solid initial offer. And then they started
3 asking for things that seemed, at least to us, like
4 there was no way you guys would agree to it. So,
5 it looked like it was going not a good direction.

6 Q. And when you say 'they', I'm sorry, who are
7 you referring to?

8 A. ExxonMobil negotiators, whoever was
9 negotiating or their superiors agree to. I
10 remember seeing something in the contract about
11 asking for the CCB jobs back to be union
12 represented. There was a strike over that in, I'm
13 guessing '88. I just didn't see that being a
14 likely offer that would go anywhere.

15 Q. So Mr. Sanderson, it sounded like you
16 monitoring collective bargaining negotiations
17 between the company and the union and back in 2021,
18 right?

19 A. Yes.

20 Q. How were you monitoring these...

21 A. Company sent out...

22 Q. I'm sorry...

23 A. I'm sorry.

24 Q. ...wait. I'm sorry. Let me make sure I asked
25 the question first before you answer that question.

1 So you and I don't talk over one another.

2 So, how were you monitoring those collective
3 bargaining negotiations between the company and the
4 union?

5 A. The union was sending out updates on their
6 Facebook page. I'm not a member of that, but a
7 coworker shared that with me. And also, the
8 company was sending out EIB, or Employee
9 Information Bulletins, I believe is what it stands
10 for, updating employees on negotiations.

11 Q. You mentioned the Facebook updates from the
12 union just now. Do you know how many employees
13 would have received those Facebook updates?

14 A. From my understanding, if you were a paying
15 member in good standing with the union under their
16 standards, you were accepted onto that Facebook
17 page. Did you ask me how many?

18 Q. I did, yeah. But let me ask you a follow-up
19 question. You mentioned that you got the Facebook
20 post that you had second hand from another
21 employee?

22 A. Yeah. People take screenshots and share them.
23 Or your coworker gets an update on his phone while
24 you're at work and they share it with you.

25 Q. Mr. Sanderson, I'd like to direct your

1 attention now to late January of 2021. Do you
2 recall the company issuing the union a last, best,
3 and final offer?

4 A. Yes. Yes. Yes, I do.

5 Q. What were your thoughts about the company's
6 last, best, and final offer at the time?

7 A. Personally?

8 Q. Yes.

9 A. They were asking a lot but it was feasible
10 enough to -- for us to all keep our jobs and get
11 paid fairly well.

12 Q. What if any actions did you want the union to
13 take in connection with the last, best, and final
14 offer that the company had presented?

15 A. To give the employees an opportunity to have
16 their voice heard on it. Hopefully a vote.

17 Q. And why did -- I'm sorry. What's wrong? To
18 your knowledge, did the union schedule a vote on
19 the last, best, and final offer at that time?

20 A. No.

21 Q. I'm sorry?

22 A. No. No.

23 JUDGE WEDEKIND: I have to remind you. I know
24 it's -- you're anticipating the question but you
25 need to wait until it's finished because we're

1 recording, and it's tough on the transcriber like -
2 - You're talking, he's talking. It's very
3 important.

4 THE WITNESS: Sorry.

5 JUDGE WEDEKIND: It's alright. Thanks.

6 Q. BY MR. SCHUDROFF: We may have covered this
7 just a second ago, but was voting on the LBFO an
8 important issue to you?

9 A. BY THE WITNESS: Yes.

10 Q. Why was that?

11 A. For dues paying members, I think they have the
12 right to be heard in negotiations. There is a
13 small team that goes in and negotiates. But the
14 union is made up of its members and the members
15 should have the right to be heard.

16 Q. Mr. Sanderson, who if anyone from company
17 management encouraged or suggested that you enquire
18 about decertification?

19 A. No one.

20 Q. Did you ever prepare a decertification
21 signature sheet?

22 A. I did.

23 Q. Who, if anyone, from the company assisted you
24 in preparing the decertification signature sheet?

25 A. No one.

1 Q. Did Mr. Stahel help you?

2 A. No.

3 Q. How then did you figure out what language to
4 use on the decertification sheet?

5 A. NLRB's website has guidelines for the
6 standards of their petitions and examples. And so,
7 yeah. That's where I found it.

8 Q. When you first met with Mr. Stahel back in
9 February of 2021, did you tell him why you were
10 thinking about decertifying the union?

11 A. Ask me one more time. Let me -- I'm mulling
12 it over.

13 Q. Back in February of 2021, did you tell Mr.
14 Stahel why you were thinking of decertifying the
15 union?

16 A. Yeah, at the time -- Yes. Do you want to hear
17 why?

18 Q. Please go ahead. Please explain. Tell me
19 more, yes.

20 A. At the time it wasn't -- it wasn't that I
21 thought decertif -- I didn't think that
22 decertification was feasible, nor did I think it
23 was the fastest option to stay at work. But I
24 thought it may light a fire under the union to get
25 a contract in front of the employees. Bit of a

1 scare tactic is how it started, to attempt to get a
2 little bit of control back to the employees in
3 negotiation?

4 Q. I'm sorry, and did you share that message
5 directly with Mr. Stahel?

6 A. I believe I did early on, yeah.

7 Q. Mr. Sanderson, how did you know to go to Mr.
8 Stahel in the first place? Or to reach out to Mr.
9 Stahel in the first place?

10 A. I did a reach out to HR because in 2015 there
11 was a memo obtained by another employee. Which
12 turns out, I believe, to be the same memo that I
13 received in 2021. And then I contacted Mr. Stahel
14 specifically because his name was on the EIBs that
15 were coming out from the company.

16 Q. And just for our reference, EIB, that's an
17 employee information bulletin?

18 A. I believe so.

19 Q. Mr. Sanderson, in the binder that's in front
20 of you, there are joint exhibits. If I could ask
21 you please to turn to Joint Exhibit 78?

22 A. Okay.

23 Q. Okay, do you recognize this document?

24 A. I do.

25 Q. Okay, what is this document?

1 A. It's an email and a reply to an email. An
2 email of questions of what is was I could
3 communicate with my coworkers and Mr. Stahel's
4 reply.

5 Q. Okay, I'd like to direct your attention to the
6 bottom part of that email. Specifically number
7 three where there's a reference to a lockbox? Or a
8 lock dropbox? Do you see where I'm referring?

9 A. Yes, sir.

10 Q. Okay. Why did you ask Mr. Stahel about a
11 dropbox?

12 A. I wanted a secure location to be able to
13 receive decertification petitions at the time. I
14 wanted to secure it because I knew there would be
15 some frustration with the decertification effort.
16 And just from my dealings in the past, I figured
17 there was a few employees out there that may tamper
18 with, remove, or-

19 Q. And did Mr. Stahel respond to your email?

20 A. He did.

21 Q. And it's his response to number three in the
22 email above responsive to -- Was that responsive to
23 your number three in the email you had below?

24 A. Yes.

25 Q. Okay, Mr. Sanderson. Who set up the lockbox?

1 A. I did.

2 Q. Where did you get the materials?

3 A. I purchased it from -- well it was a -- it's a
4 little wall hanging mailbox is what the lockbox is.

5 And it was the cheapest lockable wall hanging
6 mailbox I could find at Lowe's or Home Depot.

7 Q. Alright. I have two documents for
8 identification purposes that I'd like to mark. I
9 think we're up to 11?

10 **(Respondent Exhibit 11 & 12, marked for**
11 **identification.)**

12 Okay, Mr. Sanderson, I've just shown you has
13 been marked for identification purposes as
14 Respondent's 11 and Respondent's 12.

15 Do you recognize these photos?

16 A. Yes.

17 Q. What are these a photos of? Or what did --
18 What are these photos of?

19 A. This is the Crude A operator shelter and on
20 one of those you have the lockbox circled.

21 Q. Okay. And how do you know this to be the
22 case?

23 A. I work there.

24 Q. And are these photos an accurate depiction of
25 the work area where you work?

1 A. At the time.

2 MR. DOOLEY: We'll stipulate to these
3 documents.

4 MR. SCHUDROFF: Alright. So. I guess, Your
5 Honor, if I offer them as Respondent 11 and 12.

6 JUDGE WEDEKIND: Any objection?

7 MR. DOOLEY: No objection.

8 MR. FLYNN: No objection.

9 JUDGE WEDEKIND: Okay. They're both received.
10 Thank you.

11 **(Respondent Exhibit 11 & 12 received into**
12 **evidence.)**

13 Q. BY MR. SCHUDROFF: Okay, so Mr. Sanderson, if
14 you could, could you please, looking at R-11, could
15 you just describe this work area to us?

16 A. BY THE WITNESS: Sure. Picture's taken from
17 the south door of Crude A shelter, which is the
18 common entrance and exit for everyone.

19 Q. I'm sorry, we're looking at R-11 right now.
20 This is -- You're looking at R-11 right now, right?
21 Yes, correct, okay. So, yes. Tell us about what
22 we see in this picture here.

23 A. The south door to Crude unit A is where the
24 picture is taken from. You walk into a little, I
25 don't know, six foot by six foot holding area.

1 That's away from -- It has a wood spacer, divider
2 gate that we had built. And then the lockbox is to
3 the left and then further beyond is our desks and
4 work areas.

5 Q. Okay. So Mr. Sanderson, in the -- Still
6 looking at R-11, do you see where the box is? The
7 decertification drop box, do you see where that is?

8 A. Yes, sir.

9 Q. Is there any work that employees perform right
10 in that area?

11 A. No, sir.

12 Q. Do employees ever post things on the wall in
13 this area? Work area?

14 A. Yes.

15 Q. Okay, and are those -- are there -- I'm sorry.
16 Are there postings depicted in this photo at all,
17 in R-11?

18 A. I don't know what those papers are, so I can't
19 say.

20 Q. What -- to your knowledge, what have employees
21 posted in the work areas, though?

22 A. Information. You know, papers about
23 raffles...

24 Q. Anything else?

25 A. ...fundraisers, bible verses will appear

1 periodically. What would you call it?

2 Motivational quotes is what I'm reaching for.

3 Yeah.

4 Q. To your knowledge, does the company remove
5 these postings when they are posted on the...

6 A. No.

7 Q. ...side of the wall there?

8 Mr. Sanderson, have there been any instances
9 where union representatives would come to the Crude
10 And unit A operator shelter to speak with
11 represented employees like yourself?

12 A. Yes.

13 Q. And to your knowledge, were those union
14 related discussions?

15 A. Yes.

16 Q. Alright. Did they occur on working time?

17 A. I believe so. I was working.

18 Q. Mr. Sanderson, going back to 2015, you
19 mentioned before that you had stopped paying dues.
20 Do I have that right?

21 A. Correct.

22 Q. Okay. After you stopped paying dues, did
23 anyone from the union come to speak with you while
24 you were in the Crude A shelter?

25 A. Yes.

1 Q. What was the subject matter of those
2 discussions?

3 A. Frustration with my pulling my dues and the
4 need to support the union.

5 Q. Mr. Sanderson, how regularly do you check your
6 company email?

7 A. On work days.

8 Q. Alright. And is every email you receive
9 during those working days, are they completely work
10 related?

11 A. No.

12 Q. What are the kinds of non work related emails
13 that you receive?

14 MR. DOOLEY: I'm going to object to relevance
15 on this one, Your Honor. We've already been over -
16 - there's no allegation as to Respondent allowing
17 Mr. Sanderson to use its email system for the
18 decertification effort.

19 MR. SCHUDROFF: It's one question, Your Honor.

20 JUDGE WEDEKIND: Okay, overruled. Go ahead.

21 MR. SCHUDROFF: I'll ask the question again.

22 Q. BY MR. SCHUDROFF: What kind of non work emails
23 do you receive via email?

24 A. Volunteer events, food drives, when food's --
25 trucks are going to be out of work.

1 Q. And do those come from other employees?

2 A. Other employees or admins, yeah.

3 JUDGE WEDEKIND: Other employees or what?

4 THE WITNESS: I'm sorry, admins.

5 Administrative assistants.

6 Q. BY MR. SCHUDROFF: Mr. Sanderson, has any
7 supervisor or manager communicated any threatening
8 -- I'm sorry, anything threatening or negative to
9 you about the union?

10 A. BY THE WITNESS: No.

11 Q. Mr. Sanderson, I've just shown you what has
12 been marked for identification purposes as
13 Respondent's 13. Do you recognize this document?
14 **(Respondent Exhibit 13, marked for identification.)**

15 A. Yes, sir.

16 Q. And what is it this document?

17 A. A response back from Andy to a question I
18 posed.

19 Q. Is this an accurate copy of the email you
20 received from Mr. Stahel?

21 A. I believe so.

22 Q. Alright.

23 MR. SCHUDROFF: I move to admit R-13 into
24 evidence.

25 MR. DOOLEY: No objection.

1 MR. FLYNN: No objection.

2 JUDGE WEDEKIND: It's received.

3 **(Respondent Exhibit 13 received into evidence.)**

4 Q. MR. SCHUDROFF: So Mr. Sanderson, why did you
5 ask Mr. Stahel the question that ultimately
6 prompted the response that he gave you in this
7 email?

8 A. BY THE WITNESS: Let's see, this was post
9 lockout, it appears. Many untrue things were being
10 said.

11 Q. Like what?

12 A. Like, "If we decertify, we could be fired."
13 "If we decertify, they're going to cut our pay."
14 "If you decertify, you have no rights as a worker."
15 Disparaging remarks that I didn't believe were
16 true. And after looking at the National Relations
17 Act, it appeared that they weren't true but I
18 wanted to hear the company's response to these
19 questions.

20 Q. And Mr. Stahel provided that response to you,
21 right?

22 A. Yes.

23 Q. Mr. Sanderson, around this time, if you
24 recall, did other employees ask you whether they
25 would be able to return to work if the

1 decertification effort was successful?

2 A. Yes.

3 Q. What if anything did you do in response to
4 those questions from those other employees?

5 A. If I knew the answer, I answered them. If I
6 didn't know the answer, I would forward them up to
7 Andy for clarification if the company could
8 comment.

9 MR. SCHUDROFF: Okay I'm going to do two at
10 time here. Mark 14 or 15.

11 **(Respondent Exhibits 14 & 15 marked for**
12 **identification.)**

13 WITNESS: Thank you.

14 MR. SCHUDROFF: Getting my steps in today.

15 MR. DOOLEY: If it'll save us any time, I'm
16 willing to stipulate to any of the email between
17 Brian Sanderson and Andy Stahel.

18 COURT REPORTER: Hey, hold on. We need to go
19 off record.

20 MR. SCHUDROFF: Hold on, I tripped on
21 something.

22 My apologies.

23 (Off record)

24 JUDGE WEDEKIND: Okay, back on the record. So
25 you've offered 14 and 15. I mean, you're free to

1 ask questions about it. But any objections to 14
2 and 15 coming up?

3 MR. SPITZ: No, Your Honor.

4 MR. FLYNN: No.

5 JUDGE WEDEKIND: Okay. You want them in?

6 MR. SCHUDROFF: Yes, Your Honor.

7 JUDGE WEDEKIND: Okay, they're in.

8 **(Respondent Exhibit 14 & 15 received into**
9 **evidence.)**

10 Q. BY MR. SCHUDROFF: Mr. Sanderson, if we can
11 start with R-14, which is in front of you. If you
12 can turn over to the back page there. In the email
13 dated Wednesday June 16, 2021 at 1:24 PM, why did
14 you reach out to Mr. Stahel?

15 A. BY THE WITNESS: The persistent untruth of
16 being terminated or having wages cut if
17 decertification occurs kept being pushed.

18 Q. Okay.

19 A. So I was looking for concrete evidence from
20 the past as evidence to potentially -- what -- how
21 the company would handle it if we went through with
22 decertification.

23 Q. You also asked about what's staffing was like
24 before and after the decertification was like in
25 those instances, right?

1 A. Yeah, for potential evidence of staffing cuts
2 that would occur.

3 Q. Okay. And why'd you ask that?

4 A. Misinformation being spread that we would be -
5 - staffing would be cut, jobs would be reduced,
6 unit staffing would go down, if the union wasn't
7 around.

8 Q. Misinformation from whom?

9 A. The union.

10 Q. You also asked about pay before and after
11 decertification. Do you see that?

12 A. I do.

13 Q. Why'd you ask that question?

14 A. The union was stating how we could have our
15 pay cut, reduced, if we decertify.

16 Q. And to your knowledge at that time, were
17 bargaining unit employees discussing these matters
18 amongst themselves?

19 A. Yes. Yes.

20 Q. Is that why you asked Mr. Stahel that
21 question?

22 A. Yes, looking for...

23 Q. You also asked about layoffs and terminations
24 following decertification. Do you see that?

25 A. Yes.

1 Q. Why'd you ask that question?

2 A. Another statement from the union.

3 Q. Alright Mr. Sanderson, I'm going to ask you to
4 turn to R-15 now. In this email you asked the
5 Beaumont polyethylene plant. Do you see that?

6 A. Yes.

7 Q. What specifically did you ask Mr. Stahel about
8 in this email?

9 A. That they had received a raise. I think I
10 referred to it as 'this year', but in 2021.

11 Q. And why'd you ask that question?

12 A. Because statements from the union that we
13 would not be receiving raises. "You don't receive
14 raises and you only get paid well because you are a
15 union site." So I wanted clarity on the non-union
16 sites that were local, so. Once again evidence
17 toward what we could expect.

18 Q. And Mr. Stahel provided you answers to both of
19 the emails that are at the bottom of both R-14 and
20 R-15, right?

21 A. Yes.

22 Q. Okay, Mr. Sanderson, I want to shift gears a
23 little bit now and talk about the decertification
24 efforts themselves. When you started discussing
25 decertification in February of 2021, what did you

1 believe the likelihood that the union would be
2 decertified was?

3 A. Zero.

4 Q. Why did you think that at the time?

5 A. They've been unionized for -- I don't know the
6 exact time frame, I've been told since the '50s.
7 It's pretty common in the area and the employees
8 were used to that setup.

9 Q. So then what was your goal in initiating
10 decertification efforts, then?

11 A. To try to get the people a vote.

12 Q. I'm sorry. Try to get the people a?

13 A. I'm sorry. Trying to get the represented unit
14 a vote. I believe I included that on my emails.
15 If they won't let us vote, we can move to
16 decertify.

17 Q. And just to be clear, a vote on what?

18 A. I'm sorry. A vote on a contract, which at the
19 time I believe was the what you guys called the
20 last, best, and final.

21 Q. Eventually did you put those communications on
22 your Facebook page?

23 A. I did. It was the first thing I believe I
24 posted on there.

25 Q. We may have covered this before, but just to

1 make sure we did. How many times, if any, did you
2 tell Mr. Stahel the motivation underlying your
3 decertification efforts?

4 A. Probably more than once. I know -- I know
5 early on I thought it was a pipe dream to decertify
6 and thought it was just a -- hopefully just a
7 motivational status for the union.

8 Q. Did you express your goal for decertification
9 to other bargaining unit employees?

10 A. Absolutely. Yeah.

11 Q. Why did you do that?

12 A. I wanted to get a vote for the members. I
13 often said to anyone, "If we're allowed a vote,
14 I'll stop doing this. I'm done." And so I -- We
15 were never allowed a vote so I persisted.

16 Q. And how did you communicate the -- Excuse me.
17 That's wrong. How many times -- How did you
18 communicate that message?

19 A. Face to face conversations. I started getting
20 many visits after I sent out the first email. A
21 lot of phone calls.

22 Q. Any other ways?

23 A. Via email. I didn't say I would stop, I just
24 said, have an opportunity to -- If we have an
25 opportunity to vote -- "If we do not get an

1 opportunity to vote, we'll move to decertify."

2 Q. Did you transmit that message via social media
3 at all?

4 A. I posted those on the Facebook page and
5 potentially other Facebook posts that included
6 similar information.

7 MR FLYNN: We are what?

8 MR: SCHUDROFF: We're now at R-15. No, R-16.
9 R-16. Okay.

10 MR: FLYNN: 16, is it?

11 MR. SCHUDROFF: 16, yes.

12 MR. FLYNN: Okay.

13 **(Respondent Exhibit 16, marked for identification.)**

14 Q. BY MR. SCHUDROFF: Mr. Sanderson, I've just
15 shown you what has been marked as for
16 identification purposes as Respondent's 16. Are
17 you familiar with the Facebook account BMRF?

18 A. BY THE WITNESS: Yes, sir.

19 Q. How are you familiar with that particular
20 Facebook account?

21 A. I created it.

22 Q. Okay. Are you familiar with the Facebook
23 group Decertify BMRF 2021?

24 A. Yes.

25 Q. How are you familiar with that?

1 A. I created it.

2 Q. I'd like for to, if you can, flip through the
3 stack of documents that I've just shown you. Can
4 you tell us what these documents are?

5 A. The quick flip through, it appears these are
6 my posting to the Decertify BMRF 2021 Facebook
7 page.

8 Q. Okay. To your knowledge is -- was the --
9 these Facebook posts accessible to the general
10 public?

11 A. Yes, open to the public.

12 MR. SCHUDROFF: At this point, Your Honor, we
13 move to admit Respondent's 16 into evidence.

14 MR. DOOLEY: I'm still flipping through these,
15 but I am going to just raise a general relevance
16 objection. I don't know how these are relevant to
17 this proceeding. Obviously it's clear that Mr.
18 Sanderson communicated with employees through this
19 Facebook group as well as through, you know, the
20 employer's email system. I don't know if we need a
21 huge stack of documents to establish that and I
22 don't know that the content of these messages is at
23 all relevant.

24 MR. FLYNN: We would -- We would agree with
25 that, Judge.

1 JUDGE WEDEKIND: Why don't you respond and then
2 I'll--

3 MR. SCHUDROFF: Yes, Your Honor. Your Honor,
4 this is a motive case and these documents go to
5 show that -- they're a timeline, essentially that
6 shows that decertification had nothing to do with
7 the lockout decision, the continuation of the
8 lockout, or the company's approach in negotiations.
9 And they are the sole outward indicator of that.

10 JUDGE WEDEKIND: Just tell me, yeah I'm
11 inclined to let it in. Just tell me again, when
12 was the last, best, final offer?

13 MR. SCHUDROFF: January 31, 2021.

14 JUDGE WEDEKIND: And one other question. Are
15 these in chronological order?

16 MR. SCHUDROFF: Yes, Your Honor.

17 JUDGE WEDEKIND: So, May 21 is the first --
18 That was the first one. Is that...

19 THE WITNESS: I did -- hadn't had -- didn't
20 create the Facebook page prior to that, correct.
21 That was the first.

22 Mr. DOOLEY: And May 21st would have been after
23 the lockout began and --

24 JUDGE WEDEKIND: Also after lockout.

25 MR. SCHUDROFF: I'll ask a question about...

1 MR. DOOLEY: -- we already established that
2 this effort began before the lockout.

3 MR. SPITZ: There is an allegation that the
4 employer continued the lockout because of its
5 desire to decertify the union.

6 MR. SCHUDROFF: And I'm prepared to ask the
7 witness a question as to why May 21 was the first
8 time that this was posted.

9 JUDGE WEDEKIND: Okay, just let me check
10 something here. Yeah, okay. Overruled. I'll let
11 it in.

12 **(Respondent Exhibit 16 received into evidence.)**

13 Q. BY MR. SCHUDROFF: Okay, Mr. Sanderson, I'd for
14 you to take a look at the first page of R-16. You
15 can see there it's dated May 21, 2021 -- 22. Do
16 you see that?

17 A. BY THE WITNESS: Yes, sir.

18 Q. Okay. Is there a specific reason why this
19 first post was not until May 21, 2021?

20 A. I didn't believe decertification was real or
21 had a chance at this point.

22 Q. Mr. Sanderson, did you have access to your --
23 I'm sorry. Withdrawn. Mr. Sanderson, when did the
24 lockout commence, if you can recall?

25 A. May first, I believe.

1 Q. And after -- On or after May first, did you
2 have access to your company email?

3 A. I did not.

4 Q. Who, if anyone, from the company assisted you
5 with preparing this Facebook account?

6 A. No one.

7 Q. Were you speaking for the company in your
8 Facebook posts?

9 A. No.

10 Q. To your knowledge, were there other bargaining
11 unit employees who wanted the union to bring the
12 company's offer to a vote at this point?

13 A. Yes.

14 Q. How did you know that?

15 A. There were several text messages, screenshots
16 of text messages, and second hand information
17 shared with me about groups or individuals going to
18 members of the bargaining committee for the union
19 at the time and promptly being told to be quiet and
20 get in line.

21 Q. Mr. Sanderson, prior to May 21, 2021, did you
22 send emails to bargaining unit employees concerning
23 decertification?

24 A. Prior to May 21, '21. Yes. When we were --
25 pre-May first before lockout when I had access to

1 the company email.

2 Q. Did you repost any of those email that you
3 sent to bargaining unit employees on your Decertify
4 BMRF account?

5 A. Five or six of them, yes.

6 Q. Why did you do that?

7 A. I wanted the employees internally to know this
8 was the same person who started it. Hopefully to
9 have some comfort in being able to respond and
10 contact. But I didn't want the public to be able
11 to see my personal information at the time, so.
12 You know, try to avoid some extra publicity and
13 harassment potentials.

14 Q. And just looking through, if you -- the first
15 five pages -- I'm sorry. If you look at page two
16 of the packet, page three of the packet, page four
17 of the packet, and page five of the packet. And
18 even page six of the packet. Is this what you --
19 Are these the emails that you replicated and
20 reposted?

21 A. Yes, sir.

22 MR. SCHUDROFF: Thank you. You can put a --
23 Respondent -- we can put respondent 16 down.

24 Q. BY MR. SCHUDROFF: Mr. Sanderson, you were the
25 petitioner of the decertification case captioned

1 16-RD-283796, right?

2 THE WITNESS: Is this what I filed in October?

3 MR. SCHUDROFF: Yes.

4 A. BY THE WITNESS: Okay, yes.

5 Q. BY MR. SCHUDROFF: And Mr. Sanderson, you
6 presented a showing of interest along with that
7 petition. Do you recall that?

8 A. Correct, yes, sir.

9 Q. And you filed that petition somewhere in
10 October of 2021?

11 A. Late October 2021, yes.

12 Q. Mr. Sanderson, do you recall the union
13 scheduling a ratification vote on October 19, 2021?

14 A. They scheduled one late October, correct.

15 Q. Okay. So does October 19th sound about right?

16 A. Sounds about right. I know it was a -- it was
17 after I filed the petition, I believe.

18 Q. Okay. What, if anything, were bargaining unit
19 employees told by the union about the ability to
20 vote on the offer before November 1, 2021?

21 A. Told if they voted this down, it would give
22 the committee members a couple more weeks to
23 negotiate and that they would have another re-vote
24 or be able to vote again, either on the same or
25 something better by November first.

1 Q. Okay. What was the significance of November
2 1, 2021?

3 A. I believe the offer the company had on the
4 table was being withdrawn at that time.

5 Q. Was there anything about a ratification bonus
6 contained in that offer?

7 A. I do not recall.

8 Q. So you mentioned a possible second opportunity
9 to vote on that contract offer. Is that right?

10 A. On November 1st, yes.

11 Q. Okay. Did employees ever get that second
12 opportunity to vote?

13 A. Never received it.

14 Q. How, if at all, did the union's failure to
15 bring the proposal for a vote affect the number of
16 decertification signatures?

17 A. Failing to bring it to a vote allowed me to
18 hit 30%. Bringing it to a vote and then advocating
19 against voting for it just to say they brought it
20 to a vote, and promising to re-vote, and not
21 getting to re-vote, significant increase in
22 signatures I received.

23 Q. So are you saying that signatures picked up
24 after mid-October?

25 A. Signatures steadily increased to October to

1 hit the 30% and then after, what I believe were
2 several poor decisions from the union, they -- they
3 increased after that, yes.

4 Q. And when were those poor decisions?

5 A. Late October.

6 MR. SCHUDROFF: Alright so this was the last
7 email I was going to -- well, I guess I have the
8 decertification memo and the last email I was going
9 to introduce, which I hope Mr. Dooley and Mr. Flynn
10 will stipulate to the admission of both. 17?

11 JUDGE WEDEKIND: Yes.

12 MR. SCHUDROFF: 17. You do 18. I'll do 17.

13 **(Respondent Exhibit 17, marked for identification.)**

14 Alright. This time I'm just going to
15 circulate R-17, which is the decertification
16 memorandum that we've previously discussed. Which
17 will probable dispute the authenticity of
18 (inaudible - walks away from microphone)

19 MR. FLYNN: 17?

20 MR. SCHUDROFF: 17.

21 MR. DOOLEY: We're willing to stip to this
22 one.

23 MR. SCHUDROFF: Your Honor, we move for
24 admission to R-17.

25 MR. DOOLEY: No objection.

1 JUDGE WEDEKIND: Okay, it's received. Thank
2 you.

3 **(Respondent Exhibit 17 received into evidence.)**

4 This is the Q&A, right? 17 is the Q&A memo
5 from -- that we had testimony about?

6 (No audible answer)

7 MR. SCHUDROFF: One more document. I'm sorry.
8 R-18. This is just another email between Mr.
9 Stahel and Mr. Sanderson.

10 **(Respondent Exhibit 18 marked for identification.)**

11 Mr. Dooley, Mr. Flynn, any...

12 MR. DOOLEY: No objection.

13 MR. SCHUDROFF: No objection. Okay, so. Move
14 for admission of Respondent 18.

15 JUDGE WEDEKIND: It's received.

16 **(Respondent Exhibit 18 received into evidence.)**

17 MR. FLYNN: No objection.

18 Q. BY MR. SCHUDROFF: Alright. Mr. Sanderson, if
19 you could take a look at what has been entered into
20 evidence as Respondent 18, you can see that Mr.
21 Stahel responded to you, "Please see the requested
22 document." Why did you -- what were you requesting
23 that prompted this response?

24 A. BY THE WITNESS: Union claims were that a
25 represented site gets paid more because they

1 receive better pay. It did not -- I did not
2 believe that to be the case so I requested
3 information to compare us to sister sites that were
4 not represented.

5 Q. And to your knowledge, Mr. Sanderson, had this
6 document that was attached to Mr. Stahel's email,
7 had that been distributed to employees already?

8 A. I don't think so. I don't know.

9 Q. You don't recall?

10 A. I don't recall.

11 Q. But -- If you could take a look, it does -- It
12 is identified as a memo from the Beaumont Human
13 Resources department on October 31, 2021. Do you
14 see that?

15 A. Correct, yes.

16 Q. Mr. Sanderson, after you filed the
17 decertification petition, did employees continue to
18 sign the decertification petition?

19 A. After I filed the showing of interest of 30%?

20 Q. Yes. Yes, Mr. --

21 A. Yes.

22 Q. And to your knowledge, what if anything, was
23 the significance of additional on the
24 decertification petition after you filed the
25 showing of interest to the labor board?

1 A. If we reached 50% on the decertification
2 petition numbers, the company has the option of
3 withdrawing recognition of the union and it would
4 be a potentially quicker option to get back to work
5 at that point.

6 Q. Okay, Mr. Sanderson, if you could please pick
7 up R-16.

8 Before we get there, though, Mr. Sanderson,
9 going to the -- I'd like to direct you now to the
10 end of December of 2021. Do you recall what, if
11 anything, happened with the ballots in connection
12 with the decertification election?

13 A. They were impounded at the union's request.

14 Q. Okay. And after the ballots were impounded,
15 did you continue to collect decertification --
16 signatures for the decertification petition?

17 A. I did.

18 Q. Why did you do that?

19 A. What got known -- There was also the election.
20 We still did not have an opportunity to vote on
21 anything. Well, I'm sorry. I take that back. We
22 didn't have an opportunity to vote without being
23 told to vote no and the union had the ballots
24 impounded with a potential long-term delay.
25 Indefinite. And it looked like our only shot to

1 getting back to work at that point was potentially
2 hitting 50% and going back to work.

3 Q. To your knowledge, did the company ever reach
4 an agreement with the union?

5 A. Have they ever? Yes.

6 Q. I'm sorry. After -- After December 2021, did
7 the company and the union reach a collective
8 bargaining agreement?

9 A. After -- So, yes. In -- I don't know the time
10 frame. March, maybe? March 2022. Yeah. Correct.

11 MR. SCHUDROFF: Can we just take minute? Just
12 a -- I may be done at this point.

13 JUDGE WEDEKING: Sure. Let's go off --

14 *[Off the record]*

15 Q. BY MR. SCHUDROFF: Mr. Sanderson, in 2022, were
16 you aware that the union had filed unfair labor
17 practice charges with the -- with the National
18 Labor Relations Board against the company?

19 A. BY THE WITNESS: Yes.

20 Q. And had you filed any charges against the
21 union with the National Labor Relations Board?

22 MR. DOOLEY: Objection, Your Honor. We don't
23 have any allegations against the union at issue in
24 this case.

25 JUDGE WEDEKIND: What's the...

1 MR. SCHUDROFF: The relevance of this question,
2 Your Honor, is that Mr. Sanderson was asked about
3 meetings with the company and we want to establish
4 why those meetings were taking place.

5 MR. DOOLEY: I still don't see the relevance to
6 what we're looking at here.

7 JUDGE WEDEKIND: Well we had a lot of questions
8 about his meeting with the company. So. Were they
9 mostly -- most of those questions were from the
10 union. Do you have a response to this objection?

11 MR. FLYNN: I just would agree with the general
12 counsel, Your Honor. I don't see what that has to
13 do with the issues before the court.

14 JUDGE WEDEKIND: Alright. I'll let it go for
15 awhile. Let's continue. Overruled.

16 Q. BY MR. SCHUDROFF: How many -- Mr. Sanderson,
17 approximately how many charges were you aware of
18 that had been filed with the National Labor
19 Relations Board?

20 JUDGE WEDEKIND: Which -- that he filed? Or...

21 MR. SCHUDROFF: Just generally that were valid.
22 That had been filed.

23 THE WITNESS: At what time frame?

24 Q. BY MR. SCHUDROFF: Mr. Sanderson, you -- you
25 were asked under direct examination, or actually

1 cross examination by the union, about meetings with
2 the company that you participated in.

3 A. BY THE WITNESS: Yes.

4 Q. At the beginning of those meetings, were you
5 asked to sign a particular document before the
6 meeting could commence?

7 A. I was. Do you want me to say what it is?

8 Q. Sure.

9 A. Okay. Those called it Johnny's Poultry
10 letter? It ultimately says I don't have to talk to
11 the company. I can leave at any time. It won't
12 affect my job. Those type of things. I'm doing it
13 of freewill.

14 Q. And did you sign that type of document every
15 single time you met with the company's lawyers?

16 A. I did. Yeah.

17 MR. SCHUDROFF: No further questions, Your
18 Honor.

19 JUDGE WEDEKIND: Okay. Any redirect?

20 MR. DOOLEY: Oh, yeah, Your Honor. I'll try to
21 keep it as quick as possible.

22 REDIRECT EXAMINATION

23 Q. BY MR. DOOLEY: Mr. Sanderson, you answered
24 some questions on cross examination about whether
25 you had any conversations with the union

1 representatives in the shelter area on working
2 time. Is there a strict delineation between
3 working time and non-working time? Do employees
4 have scheduled breaks?

5 A. BY THE WITNESS: No scheduled breaks.

6 Q. Do you take breaks?

7 A. I don't. No. It's a twelve hour shift...

8 Q. And you don't take a break?

9 A. Define a break.

10 Q. Do you ever have time when you're not working?

11 A. Yeah, but I'm on call at that moment to
12 respond as needed.

13 Q. And going back to the photos that were put in,
14 if you could take a look at -- I don't know if your
15 copies are marked but...

16 A. They are.

17 Q. ... I'm looking at. Okay. R-11? So those
18 white boards up on the wall there. It looks like
19 there's a map. Is that right? The one that's
20 directly above the dropbox?

21 A. Correct.

22 Q. And you can't read, you said, the notice
23 that's posted there, but does it appear to be
24 anything non-work related?

25 A. I don't know. I can't tell what it is.

1 Q. Okay. The other white board that you can see
2 there in the background. What kind of information
3 is up there?

4 A. There's multiple in the background. Point for
5 me and I'll respond.

6 Q. I'm talking about the one -- I'm going to --
7 Instead of pointing, I'm just going to describe so
8 it picks up on the transcript. It looks like
9 there's bookshelves to the right of the -- Right
10 where it's directly above the dropbox. Yes, yes.
11 That's the one I'm talking about.

12 MR. SCHUDROFF: I'm sorry, the bookshelves to
13 the left or the right of the whiteboard?

14 MR. DOOLEY: To the -- The bookshelves are to
15 the right of the white board and then there's a
16 second white board kind of behind those
17 bookshelves.

18 MR. SCHUDROFF: I see. Okay. So which are you
19 referring to, Bryan?

20 MR. DOOLEY: The white board that's behind the
21 bookshelves>

22 MR. SCHUDROFF: Okay. Go ahead. I'm sorry.

23 Q. BY MR DOOLEY: So what type of information is
24 up there?

25 A. BY THE WITNESS: It appears to be a unit

1 drawing.

2 Q. And what would that be?

3 A. A drawing of the unit.

4 Q. Of the work area?

5 A. The unit that I work on.

6 Q. Okay. And the desks there, are those desks
7 that employees would be actively working at
8 normally?

9 A. Yes. Yes.

10 Q. Okay. And when you talked about people
11 posting, you know, motivational quotes and things
12 like that, would those generally be in this area
13 where the decert box is? Or would those be like
14 around peoples' work areas and the desks?

15 A. Both. You could pick a spot in there, any of
16 those would have -- could be there.

17 MR. DOOLEY: I have nothing further at this
18 time, Your Honor.

19 JUDGE WEDEKIND: Nothing from the union?

20 MR. FLYNN: Yes, sir.

21 JUDGE WEDEKIND: Okay.

22 REDIRECT EXAMINATION

23 Q. BY MR. FLYNN: You have mentioned several times
24 that your motivation for the decert petition is
25 because you wanted the members to have a right to

1 vote on the company's various contract proposals?

2 A. BY THE WITNESS: Yes.

3 Q. Okay. And just to be clear, you weren't a
4 member at that time, right?

5 A. I was not paying. I'm represented by the
6 union.

7 Q. But I mean, you wouldn't have been able to
8 vote.

9 A. I would not. That's why I pulled dues in
10 2015. I didn't have a chance to vote then for many
11 months, so I pulled dues.

12 Q. Now back on this picture, Respondent Exhibit
13 11, I wasn't really when counsel for the general
14 counsel was asking you about these two white
15 boards? I want to ask you about the one that's one
16 the left closest to the decert dropbox.

17 MR. FLYNN: Yes, sir.

18 A. BY THE WITNESS: Yes. Correct.

19 Q. BY MR. FLYNN: That's a diagram of the unit,
20 isn't it?

21 A. It is.

22 Q. I didn't hear you.

23 A. It is. Yes.

24 Q. Okay. And you had mentioned, I think, in your
25 earlier testimony, that one of the things that goes

1 on in that little area near the dropbox is a place
2 where people sign it.

3 A. I don't know if I said, but that -- that is
4 generally accurate. They -- It depends on where we
5 decide to put the sign-in sheet. We just call it
6 work authorization log. A 'WAL'. Depends on where
7 it's located.

8 Q. Would that be it? On top of that...

9 A. Yeah, you see it in the picture.

10 Q. ...wooden box?

11 A. Yeah. Bottom -- To the -- Down to the right
12 on top of the wooden box from the decert box, yes.

13 Q. That's the sing-in sheet you're referring to?

14 A. That appears to be the work authorization log,
15 yes.

16 Q. Okay. And I think you made this clear, but I
17 just want to make sure. We have in evidence
18 Respondent's exhibit 13, which should be in front
19 of you, where you had asked a question to Mr.
20 Stahel about the company can fire all of us and
21 start over. Do you see that one?

22 A. I do, yes.

23 Q. Okay. You had mentioned that you sent that to
24 Mr. Stahel because the union was telling you
25 something about that. Do you...

1 A. They're sending information second-hand.

2 Yeah. Not to me directly.

3 Q. That you didn't believe so you were trying to
4 get the company's confirmation?

5 A. I believed it was just being -- At the time, I
6 believed the union was spreading false information
7 on purpose to keep its members in line.

8 Q. And you mentioned that the Union was also
9 saying you didn't have any rights if you were
10 decertified. That was one of the other...

11 A. Correct.

12 Q. ...mis-statements that you allege...

13 A. Yes.

14 Q. ...and so, I assume you sent that question to
15 Mr. Stahel, too, at some point.

16 A. I won't -- I don't know. I won't make the
17 assumption I sent that to him. I sent to him what
18 -- Typically what I have responses back on is what
19 I've sent to him.

20 Q. Okay. And there was a comment you made that
21 'the company could cut your pay'...

22 A. Right. I was...

23 Q. ...if you were decertified.

24 A. These are things I've seen via text message
25 and phone calls from members or screenshots from

1 the Workman's Committee, the negotiating crew for
2 the Union. Texts that they had sent other
3 employees.

4 A. Okay. And that was another question you posed
5 to Mr. Stahel? I think it's perhaps in
6 Respondent's 14. You have that up there, too.

7 A. Yeah, let me see.

8 Q. And did you understand that if your group
9 became non-representative, in other words, non-
10 union, did you understand the company could legally
11 raise your wages or lower your wages whenever you
12 wanted? Did you understand that?

13 A. I understood because of the Union, I wasn't at
14 work. And I wasn't working right now at all. So I
15 was trying to get back to work.

16 Q. No, my question is about pay. Cutting pay.

17 A. Okay.

18 Q. Okay. Did you understand that if your group
19 became unrepresented, non-union in other words,
20 that the Company could cut your pay or raise your
21 pay whenever it wanted. They didn't have a union
22 to bargain with. Is that your understanding?

23 A. Ask me one more time. Let me -- Let me make
24 sure I...

25 MR. SCHUDROFF: Yeah, I'm sorry, Pat. I didn't

1 hear the question. My apologies.

2 A. BY THE WITNESS: ...answer this correctly.

3 Q. BY MR. FLYNN: Sure. You had a concern about
4 cutting pay if you decertified.

5 A. I didn't have that concern.

6 MR. SCHUDROFF: Okay. Objection to relevance
7 on this. It's going beyond the scope of cross.

8 MR. DOOLEY: You guys did ask him about...

9 JUDGE WEDEKIND: Yeah, I'm -- You're losing me.

10 MR. FLYNN: It's right in the email.

11 MR. SCHUDROFF: But it's not relevant.

12 JUDGE WEDEKIND: But so what? I mean, that's
13 the question. Why does it matter what he
14 personally believed about what the...

15 MR. FLYNN: Well, we had a lot of questions
16 about what he believed, Your Honor. Just to -- I
17 don't know.

18 JUDGE WEDEKIND: Well I mean about whether
19 wages would be cut, it -- employees -- if the union
20 was decertified. Isn't that your question?

21 MR. FLYNN: Well, he said the union was putting
22 out a misstatement about -- that wages would be or
23 could be cut if you were decertified, and so I'm
24 just asking him, you know, what he understood to be
25 the status of that.

1 JUDGE WEDEKIND: I'm going to sustain the
2 objection.

3 MR. FLYNN: Alright.

4 Q. BY MR. FLYNN: Mr. Sanderson, do you know
5 whether the union membership ever took any votes
6 prior to October of 2021? Between January and
7 October of 2021, if they took any votes to not take
8 a ratification vote. I know that's like a double
9 negative, but...

10 A. BY THE WITNESS: I understand what you're
11 getting at. Not all paying members received that.
12 It was -- it came out via a MailChimp. It was an
13 unofficial communication, it seemed to be, from the
14 Union. They would not release how many people
15 voted on it. They wouldn't release the numbers.
16 They just said, "The majority doesn't want to
17 vote." And we were supposed to take that at face
18 value.

19 Q. Okay, so you did hear that. Whether you...

20 A. Just described, yes.

21 Q. ...believe it or not. I understand. Was your
22 Facebook page, that we've got documents from,
23 Respondent's 16, was that public or private? I
24 heard you say something was private but I wasn't
25 clear.

1 A. Public. That wasn't private. Public.

2 Q. Okay.

3 MR. FLYNN: That's all I had, Your Honor.

4 JUDGE WEDEKIND: Okay. Anything further?

5 RECROSS EXAMINATION

6 Q. BY MR. SCHUDROFF: Mr. Sanderson -- Mr.

7 Sanderson, if you could briefly take a look at R-
8 11.

9 A. BY THE WITNESS: Describe it for me, I'm...

10 Q. I'm sorry, it's the photo where the
11 decertification drop box is directly in front.

12 A. I got it.

13 Q. Okay. Are you familiar with a company named
14 'World's Best Chocolate'?

15 A. I am.

16 Q. Did you ever see boxed for World's Best
17 Chocolate in this area that's depicted in R-11?

18 A. Often.

19 Q. Where would you see the World's Best Chocolate
20 box?

21 A. Where the WAL is right now, the work
22 authorization log. There, it could be back on the
23 desks, it was put at the discretion of the
24 employees selling the chocolate.

25 Q. And what is World's Best Chocolate?

1 A. It is a common fundraising chocolate sale in
2 southeast Texas. I don't know if it's common
3 everywhere else. Typically for schools, churches.
4 Sell some chocolate, raise some money.

5 Q. And what do the boxes look like?

6 A. Cardboard boxes. Two foot by one foot by one
7 foot. Rectangle. And they just say 'World's Best
8 Chocolate' on the outside, and you open them up and
9 there's chocolate inside. They may have pre-
10 printed on them how much it costs. It's typically
11 two bucks for a chocolate.

12 A. And where are the funds for those chocolates
13 generally go?

14 Q. Whoever put the box out, whatever fundraiser they
15 were doing.

16 A. And where does the -- If somebody wants to purchase
17 chocolate from the box, where does one put the money?

18 A. There's typically an envelope in the box. People
19 drop two bucks in and take a chocolate.

20 MR. SCHUDROFF: Nothing further, Your Honor.

21 JUDGE WEDEKIND: Just tell us -- tell me again, I'm
22 sorry. Where -- what are the two places they'd put those
23 boxes?

24 THE WITNESS: I'm sorry. I think it's funny I'm
25 talking about chocolates here. I apologize. Where the -

1 - here, I'll -- Where the work authorization log is right
2 now.

3 JUDGE WEDEKIND: Right, so...

4 THE WITNESS: I said, you say, two places.

5 JUDGE WEDEKIND: Right.

6 THE WITNESS: Anywhere in the shelter, they would end
7 up. Wherever was easiest to put them in front of people
8 and sell them.

9 JUDGE WEDEKIND: Okay. So that's the -- That sheet -
10 - That white sheet of paper's on top of the...

11 THE WITNESS: Yeah, that flat -- That flat book on
12 the wooden box.

13 JUDGE WEDEKIND: That's the same area it would be.

14 THE WITNESS: Yeah.

15 JUDGE WEDEKIND: Okay. Thanks. Anything further?

16 MR. DOOLEY: Just one very brief thing.

17 REDIRECT EXAMINATION

18 Q. BY MR. DOOLEY: So you mentioned the work
19 authorization log that's there on the little wooden, kind
20 of, table next to the drop box. What is that log for?

21 A. BY THE WITNESS: Keeping track of who's on unit.

22 Q. So who has to sign that log?

23 A. Anyone that signs into the unit has to sign the work
24 authorization log. Well, I take that back. There's a
25 policy on that. Anyone that's on the unit that's not a

1 direct FLS, or first line supervisor, of that unit has to
2 sign.

3 Q. And when you say that unit, is that just the little
4 shelter here we're looking at? Or does it go beyond?

5 A. I'm sorry, unit. The entirety of Crude A. Within
6 what they would call the battery limits.

7 Q. And about how many people work in Crude A?

8 A. Two. Sometimes you'll have a third operator.

9 MR. DOOLEY: Okay. Nothing further, Your Honor.

10 JUDGE WEDEKIND: Anything else?

11 MR. FLYNN: Did you ever buy the chocolate?

12 THE WITNESS: Oh, yeah.

13 MR. FLYNN: It's good, isn't it?

14 THE WITNESS: I like the almonds.

15 MR. FLYNN: Yeah. Me, too.

16 JUDGE WEDEKIND: Alright, I have a relevance
17 objection.

18 MR. SCHUDROFF: You haven't had the chocolate,
19 obviously.

20 JUDGE WEDEKIND: Oh, okay.

21 MR. FLYNN: No further questions.

22 THE WITNESS: I have a fundraiser next week. I'll
23 get you a couple.

24 JUDGE WEDEKIND: Okay.

25 RECROSS EXAMINATION

1 MR. SCHUDROFF: One quick question, Your Honor.

2 Without whether or not it is the truly the world's
3 best chocolate, the list -- or the -- I guess the sign-in
4 sheet that we've been talking about that's on that -- the
5 top of that wood shelf there. Does that always -- Does
6 that packet, or that booklet, or that sign-in sheet, is
7 that always in that location?

8 THE WITNESS: No.

9 MR. SCHUDROFF: Nothing further. Thank you.

10 JUDGE WEDEKIND: Okay. All done?

11 MR. DOOLEY: Yes.

12 JUDGE WEDEKIND: Okay.

13 MR. DOOLEY: Nothing further, Your Honor.

14 JUDGE WEDEKIND: Okay, thank you. Thanks for your
15 testimony. Feel better.

16 THE WITNESS: I feel great.

17 JUDGE WEDEKIND: Alright, good. Alright. Should we
18 take lunch?

19 Okay. So let's come back at 1:25. Off the record.

20 *[Off the record]*

21 JUDGE WEDEKIND: So, let's just go back over what we
22 just discussed.

23 MR. DOOLEY: Oh, Your Honor, we may want to go on
24 Zoom for this just to involve that other attorney for
25 ILU.

1 JUDGE WEDEKIND: Is he -- he's with us?

2 UNKNOWN SPEAKER: Yeah, he's with us now.

3 JUDGE WEDEKIND: Okay, so...

4 MR. DOOLEY: So some -- Now just remember to unmute
5 when you're talking, I guess.

6 JUDGE WEDEKIND: Okay.

7 MR. SCHUDROFF: Wait, shouldn't the witness be
8 excused?

9 JUDGE WEDEKIND: Yeah. So we don't -- can we put the
10 witness in the waiting room? If he's with us?

11 UNKNOWN SPEAKER: That's done.

12 JUDGE WEDEKIND: Okay, it's done?

13 UNKNOWN SPEAKER: Yes.

14 JUDGE WEDEKIND: Alright. Can I -- I can unmute
15 myself now, right?

16 MR. DOOLEY: Yes.

17 JUDGE WEDEKIND: Okay. So, after I'm done talking,
18 should I mute myself? For an answer? For whoever else
19 is talking?

20 MR. DOOLEY: We can try without muting every time
21 we're not talking.

22 JUDGE WEDEKIND: Okay, let's see how it goes.

23 MR. DOOLEY: We can see if we're getting any feedback
24 or anything.

25 JUDGE WEDEKIND: Okay. Let me just start my video

1 here.

2 Okay, so. Respondent, you requested us to clear the
3 room for this testimony. Is that correct?

4 MR. SPITZ: Correct, Your Honor.

5 JUDGE WEDEKIND: Okay. And we had some discussion
6 about it. General Counsel, why don't you just state your
7 position? And then the union.

8 I'm clearing the room.

9 MR. DOOLEY: Yes, Your Honor. I don't think there's
10 any particular reason to...

11 JUDGE WEDEKIND: How do I stop...

12 UNKNOWN SPEAKER: You'll need to mute yourself when
13 he talks.

14 UNKNOWN SPEAKER: Are you still...

15 JUDGE WEDEKIND: Oh, I need to -- I need to mute my
16 speaker. Yeah, okay. Go ahead.

17 Can you give me the General Counsel's position? On
18 clearing the room.

19 MR. DOOLEY: Yes, Your Honor. The General Counsel
20 doesn't see any particular reason to, but doesn't have a
21 problem if you want to do that.

22 JUDGE WEDEKIND: Okay. Is that the Union's position,
23 as well?

24 MR. FLYNN: No, we think it's an open hearing, Your
25 Honor. We don't see any reason for it.

1 JUDGE WEDEKIND: Okay. And I'm inclined not to clear
2 the room because at this point, my understanding -- The
3 witness will only be testifying about how he obtained the
4 document. Procedural issues, not the substance of the
5 document. And the witness will be told not to discuss
6 the substance of the document during this testimony.

7 Who is the attorney for the witness?

8 MR. DOOLEY: The attorney for the Independent
9 Laboratory Employee's Union is David Tykulsker and he's
10 here in the meeting with us.

11 JUDGE WEDEKIND: Oh I just see him here, yeah. Down
12 at the bottom.

13 COURT REPORTER: Will you spell that for me?

14 MR. DOOLEY: It's D-A-V-I-D, T-Y-K-U-L-S-K-E-R.

15 JUDGE WEDEKIND: Okay. It might help for people to
16 turn on their video. Just -- It helps me to know who's
17 talking sometimes. Just to get a better feel of it.

18 Mr. Tykulsker, can you hear us? And can you unmute
19 yourself for a minute? There he is. Are you hearing us
20 okay? I can't hear you. Can you unmute yourself?

21 MR. TYKULSKER: I am -- I am unmuted as far as I can
22 tell.

23 JUDGE WEDEKIND: Okay, and we -- and we hear you now.

24 UNKNOWN SPEAKER: Hold on, you've got some echo.

25 COURT REPORTER: Everyone's going to need to be

1 muted.

2 MR. DOOLEY: No, the speakers, I think, are going to
3 cause an issue because, even if the person who's talking
4 is unmuted, the -- it's going to come through the
5 speakers and then into your microphone. So we might have
6 to split up into different rooms or something. I don't
7 know how this is going to work.

8 UNKNOWN SPEAKER: Couldn't you just take the speakers
9 off and just put the microphone so --

10 JUDGE WEDEKIND: Okay, let's go off the record.

11 *[Off the record]*

12 JUDGE WEDEKIND: Alright. We're back. General
13 Counsel, would you call your next witness?

14 MR. DOOLEY: Yes, Your Honor. General Counsel calls
15 Tom Fredriksen.

16 JUDGE WEDEKIND: Okay. Mr. Fredriksen, we're trying
17 to do this as best we can through Zoom. We have some
18 audio feedback issues so we have to be very careful about
19 who's talking when. But you feel free just to -- You
20 know, when the question's done -- Wait until the question
21 is done and then feel free to answer. Try to do the best
22 we can to make sure this goes smoothly.

23 I did want to -- Before I swear you in and go any
24 further, we just want to tell you a little bit about why
25 you're being called to testify today and certain matters

1 that we do not want you to talk about. I'm going to ask
2 the General Counsel to explain that to you. Mr. Dooley.

3 MR. DOOLEY: Mr. Fredriksen, are you with us and can
4 you turn your video on?

5 JUDGE WEDEKIND: I see him.

6 MR. DOOLEY: Oh. Mine might be frozen. It looks
7 like everyone's frozen for me, actually, other than
8 myself and the Judge, for some reason. Okay, I can see
9 Mr. Fredriksen now.

10 Mr. Fredriksen, can you hear me okay?

11 JUDGE WEDEKIND: Did you turn him on?

12 Are you unmuted?

13 THE WITNESS: I am unmuted. Testing. Testing.

14 JUDGE WEDEKIND: Good.

15 MR. DOOLEY: Okay, I can hear you now. The Judge has
16 instructed me basically to tell you we're not going to
17 get into the substance of the documents during your
18 testimony. At this point, we'll just be talking about
19 basically your access to the internet system. How you
20 came across these documents without getting directly
21 into, you know, what the documents are or what they say.
22 Does that make sense?

23 THE WITNESS: Yes. Yes, it does.

24 JUDGE WEDEKIND: Okay. Okay. Alright, very good.
25 We do -- It's very important what General Counsel just

1 told you because there are some attorney client
2 privileges used here. It is a public hearing. We don't
3 want the -- these -- the substance of the documents to
4 get out until after a ruling has been made about whether
5 they're even admissible. So, again, try to be very
6 careful not to get into that.

7 At this point, I would ask you, if you would, to
8 state your name and spell it for us. For the record.

9 THE WITNESS: That is Thomas Fredrickson. That's T-
10 H-O-M-A-S, F-R-E-D-R-I-K-S-E-N.

11 JUDGE WEDEKIND: Okay. Thank you very much.
12 Alright, if you would raise your right hand, I will swear
13 you in.

14 (Whereupon,

15 **THOMAS FREDRIKSEN**

16 having been sworn/affirmed, was called as a witness
17 herein, and was examined and testified, as follows:)

18 JUDGE WEDEKIND: Thank you. Counsel? Would you like
19 to begin your questioning?

20 MR. DOOLEY: Thank you, Your Honor.

21 Mr. Fredriksen, before we get started, just to avoid
22 any kind of overlap in the audio, if you could just wait
23 until I finish my question for just a beat, a second or
24 two, before you answer, that would be great. Because
25 basically what we're having to do is adjust the volume on

1 these speakers up and down depending on who's speaking so
2 we don't get a bunch of feedback here in the hearing
3 room. Does that make sense?

4 Okay.

5 DIRECT EXAMINATION

6 Q. BY MR. DOOLEY: Mr. Fredriksen, are you currently
7 employed?

8 A. BY THE WITNESS: Yes, I am.

9 Q. And who is your employer?

10 A. The Ohio State University.

11 Q. What's your position with Ohio State University?

12 A. I'm a graduate student and graduate student teaching
13 assistant.

14 Q. How long have you been in that position?

15 A. Since September 2022. About four months. Five
16 months.

17 Q. Prior to that position, what was your previous
18 employment?

19 A. I was a Senior Research Technician at ExxonMobil,
20 formerly known as ExxonMobil Research and Engineering.
21 And then, at the time I left they had changed their name
22 to ExxonMobil Technology and Engineering Company.

23 Q. How long did you work with Exxon?

24 A. About ten years. Since October 2013.

25 Q. And what did you do in your position?

1 A. I was a -- I was a Senior Research Technician. I
2 ran samples for the mass -- in the mass spectrometry lab.

3 Q. And during your time with Exxon, were you affiliated
4 with any union?

5 A. Yes, I was.

6 Q. And what union?

7 A. The Independent Laboratory Employee's Union.

8 Q. Have you held any positions or offices with the
9 union?

10 A. Yes, I have.

11 Q. Can you tell me what positions and for what periods
12 of time?

13 A. I was a shop steward for about a month in 2017. At
14 that time, in December, I was elected to vice president
15 of the union. I started as vice president from December
16 2017 until March of 2022 where at -- During March, the
17 sitting president stepped down and I became the President
18 of ILEU.

19 Q. And how long did you serve as president?

20 A. About five months. Four months.

21 Q. Are you familiar with the intranet system, I-N-T-R-
22 A-N-E-T, used by the company?

23 A. Yes, I am.

24 Q. How are you familiar with that system?

25 A. It's used as a -- They have -- They disseminate

1 news. On the homepage you can access your employee, like
2 benefits portal, and contact information and such. And
3 probably more importantly, you can use it to host files
4 and collaborate with team members on -- in whatever group
5 you are in with the -- with the company. As a -- In
6 terms of like Microsoft SharePoint is one of the
7 platforms.

8 Q. How do you access that system?

9 A. It's the -- on a company issued laptop or personal
10 device that is cleared with the company access
11 regulations. So, I think some people can get it on their
12 iPhones and such. But I used it -- I used my laptop.

13 Q. Did you have a company email address?

14 A. Yes, I did.

15 Q. Would you log in to that intranet system the same
16 way you logged in to your company email?

17 A. Yeah. It was logged in. Yes. You -- When you log
18 in to your computer, you are also logged in to your email
19 and you're tapped into the intranet.

20 Q. How many employees have access to that intranet
21 system?

22 A. As far as I'm aware, every employee of Exxon at the
23 Clinton site, at the minimum, and I would say probably
24 every employee with some exceptions in ExxonMobil
25 Research and Engineering. As long as they had company

1 device, like a laptop or a PC.

2 Q. And would employees use that intranet system as part
3 of their day to day work?

4 A. Yeah, I would say many employees would. I wouldn't
5 say every employee, but I would say collaborating and
6 research and -- Even in other things that aren't
7 necessarily research related. Like, you know, I'm sure
8 there's a lot of use for it through other groups like
9 Upstream and such. But that's definitely part of daily
10 life as -- You go to a meeting, you collaborate with your
11 group on the same set of documents or whatnot.

12 Q. Would every employee have access to every file on
13 that SharePoint system?

14 A. No.

15 Q. How do you know that?

16 A. There are access controls that are required by the
17 company's policy called the Management of Protected
18 Information, MPI. If a document is private, or
19 proprietary, or restricted, access needs to be controlled
20 by discreet lists of people as a required control point.

21 Q. How are you familiar with those policies?

22 A. For a period of time, from maybe October of 2015 to,
23 I would say about, January of 2018, I was a -- I served
24 as the Computer Security Officer in my -- in my
25 department.

1 Q. Other than your time as Security Officer, have you
2 ever had any kind of elevated access to the SharePoint
3 system?

4 A. No, and even as a Computer Security Officer, I
5 didn't have, like, a global elevated access. I just had
6 -- I could maybe see more things for the department so I
7 could keep track of people doing their access reviews.
8 That's really about it.

9 Q. During your time as a union officer, did you ever
10 use the intranet for union purposes?

11 A. Can you explain union purposes?

12 Q. Did you ever use the company's intranet to look for
13 documents, or to work on documents related to your
14 position with the union?

15 A. Yes. They -- Company often sent out employee
16 information bulletins regarding the union and sometimes
17 those were disseminated through SharePoint, sometimes
18 through email. Sometimes you could search for
19 information from ExxonMobil news when they're talking
20 about issues related to the union. So, yeah. I would --
21 I would look at news, and information, and documents.
22 Anything involving the Independent Laboratory Employee's
23 Union.

24 Q. Have you ever come across information on that
25 intranet system related to the company's Beaumont

1 Refinery?

2 A. Yes, I have.

3 Q. How did you come across that information?

4 A. When searching for anything related to the, I
5 believe the word we looked for was 'impasse'. We also
6 looked for 'union' and 'ILU'. But I believe impasse --
7 Because our union had also had the company declare
8 impasse on us and we were looking for, you know, news or
9 information related to impasse.

10 Q. Do you remember about when this would have been?

11 A. Yes. It was, I want to say mid to late April of
12 2022.

13 Q. And these documents that you came across related to
14 the Beaumont Refinery, did you have to do anything
15 unusual to access these documents?

16 A. No. The company intranet has a, it's called
17 enterprise search engine, where you can use it to search
18 pretty much anything that's hosted on Exxon servers. And
19 if you don't have access to something, you can't open it.

20 Q. Did the documents that you came across give you any
21 indication that you shouldn't be accessing them? Did you
22 have to click through anything or anything like that?

23 A. No.

24 Q. Were the documents that you accessed marked as
25 confidential or privileged?

1 A. I don't recall anything saying confidential or
2 privileged. It seemed like it was a hosted seminar.

3 Q. And do you know if these documents were accessible
4 to other employees?

5 A. Yes, I do.

6 Q. How do you know that?

7 A. We repeated the same search on a few other people's
8 computers to -- including my own.

9 Q. Okay. So you're aware that multiple people were
10 able to access these documents.

11 A. Yes.

12 Q. Do you know about how many?

13 A. I would say, at a minimum, definitely five people.
14 Probably more.

15 Q. Do you know if these documents would've only been
16 available in Clinton, New Jersey? Or if the same
17 intranet system is used elsewhere?

18 A. I believe it is the corporate system. Almost
19 everything involving the ExxonMobil homepage and such is
20 -- All of ExxonMobil US employees. I don't remember that
21 there was anything unique to Research and Engineering
22 involving their intranet or anything like that.

23 Q. When you found these documents, what did you do with
24 them?

25 A. Well, when we saw the documents, I discussed it

1 internally with our, you know, executives and talked to
2 our attorney. I also notified Ricky Brooks that I had
3 found these documents.

4 Q. Did you download the documents?

5 A. I may have downloaded them to my personal computer,
6 but those were not -- I was not able to send those. They
7 were too large.

8 Q. Did you obtain copies of the documents in some other
9 format?

10 A. I took photographs of each slide.

11 Q. Why did you decide to take photographs of the
12 documents at that time?

13 A. Other than the fact that the files were too large to
14 send, I believed that the files were something that Ricky
15 Brooks, as the president -- or yeah, as the president of
16 the ExxonMobil union council should see. Because I felt
17 it represented a company policy...

18 MR. DOOLEY: Try not to get into the policy of the
19 documents.

20 THE WITNESS: Is that -- is that enough, then?
21 Without getting into the contents it's hard to say.

22 Q. BY MR. DOOLEY: Right, so essentially you thought,
23 oh sorry, these documents would be of interest to the
24 president of the Exxon Council. Is that correct?

25 A. BY THE WITNESS: Yes.

1 Q. Was there a reason, at that time, that you were
2 searching for these terms? Like 'union', 'ILU', and
3 'impasse'?

4 A. I don't remember exactly what provoked the searches,
5 but I do know it wasn't me who found the documents
6 originally. It was another union member who had alerted
7 it to us and I don't their reasons for looking at it. I
8 don't -- I do know that the company had declared impasse
9 a second time in March. And so that might have been what
10 provoked it.

11 Q. The documents that you took photographs of, were
12 those photographs modified in any way?

13 THE WITNESS: Can you define 'modified'?

14 Q. BY MR DOOLEY: So let's start first there. There are
15 some that are clearly just cell phone photos. Were those
16 photos altered in any way?

17 A. BY THE WITNESS: Most of the photos I took were
18 either cropped to remove computer borders or like,
19 people's desks, or stuff they had on their monitor.
20 Like, clipped to their monitor. But they were all just
21 the screen -- cropped to the screen. If cropping is
22 falls within the definition of modification, then they
23 were all cropped to the shape of -- to the screen.

24 Q. Is there a reason -- sorry -- that you cropped the -
25 - everything other than the computer screen?

1 A. I wanted to remove identifying information.

2 Q. One of the documents -- and again without getting
3 into the contents here -- appears to be a PDF of some
4 Power Point slides. Was that document in that format
5 when you obtained it?

6 A. No. That was a Power Point and I took photos of
7 each slide and I put it into a Power Point. Or I put it
8 into a PDF, so that is was smaller and easier to send.

9 Q. Okay. And again, I just want to ask. The contents
10 of what's shown on the slides, that was not modified in
11 any way?

12 A. No, I did not -- I did not intentionally or, to my
13 knowledge, accidentally modify any of the contents. I
14 was only cropping the borders out of the picture. Like
15 people's names, sometimes are at the bottom lefthand of
16 your screen. Such like that.

17 MR. DOOLEY: Your Honor, I would pass the witness for
18 now.

19 JUDGE WEDEKIND: Okay. Any questions from you?

20 MR. FLYNN: No, Your Honor.

21 JUDGE WEDEKIND: Any cross examination?

22 MR. SCHUDROFF: Mr. Stanley is going handle that.

23 MR. SCHUDROFF: Yeah.

24 JUDGE WEDEKIND: Okay.

25 MR. STANLEY: Good afternoon, Mr. Fredriksen.

1 JUDGE WEDEKIND: We're just dealing with some audio
2 issue here. We'll be right with you, Mr. Fredriksen.

3 MR. STANLEY: Just. What am I supposed to do?

4 JUDGE WEDEKIND: Can you hear -- did you just hear
5 Mr. Stanley say, "What am I supposed to do?"

6 THE WITNESS: Yes, I did.

7 MR. STANLEY: Alright, and I can hear you. Yeah.

8 Before we get started, Your Honor, I'd like to
9 request whether there are any Jencks statements or
10 related emails, IMs, other correspondence, voice mails,
11 between the General Counsel or Union and Mr. Fredriksen
12 on these issues.

13 MR. DOOLEY: There is one text message that is
14 arguable substantive. It's -- I'll provide it, just give
15 me a minute here. Sorry, I meant to do this during lunch
16 and I got caught up with other stuff.

17 MR. FLYNN: I don't have anything, Judge.

18 MR. WEDEKIND: That's what I was waiting for.

19 Alright, let's go off the record for a minute.

20 *[Off the record]*

21 JUDGE WEDEKIND: And cross examination.

22 CROSS EXAMINATION

23 MR. STANLEY: Alright, Mr. Fredriksen, can you see me
24 and hear me?

25 THE WITNESS: I can. You're a little muffled, so.

1 MR. STANLEY: Okay. Well you know that I can be loud,
2 so I'll try that.

3 MR. DOOLEY: It looks like you're muted. I think
4 you're going through from somebody else's mic. That's
5 probably why you're quiet.

6 MR. STANLEY: So I should unmute my computer.

7 MR. DOOLEY: Yeah.

8 MR. STANLEY: Alright.

9 JUDGE WEDEKIND: Alright.

10 MR. STANLEY: Is that better?

11 THE WITNESS: That's a lot better.

12 MR. STANLEY: Okay. Thank you.

13 Q. BY MR. STANLEY: Mr. Fredriksen, I don't need to
14 introduce myself. We've met before. Correct?

15 A. THE WITNESS: That's correct.

16 Q. And we've been across the table from each other a
17 time or two, haven't we?

18 A. That is correct.

19 Q. And you were -- In your union leadership role, you
20 were part of contentious bargaining that lasted over four
21 years or so, correct?

22 A. That is correct.

23 Q. And I'm sure you've heard that we were able to reach
24 agreement here in the last few months after you had
25 resigned?

1 A. I have heard that.

2 Q. Alright. And Mr. Fredriksen, you resigned under, I
3 think what we can agree are bad terms. Correct?

4 A. Can you repeat the question? Sorry, you broke up a
5 little bit.

6 Q. Sorry. You resigned under bad terms, did you not?

7 A. No. I did not.

8 Q. Do you remember sending a pretty scathing email to
9 the company about your resignation?

10 A. I did not send a scathing email to the company upon
11 resignation.

12 Q. No, sir? A letter of some kind. You don't remember
13 that?

14 A. No. I did not send a letter of any kind to the
15 company upon...

16 Q. How about a conversation? An exit interview? A
17 conversation on your way out?

18 MR. TYKULSKER: Objection.

19 MR. DOOLEY: I think there was an objection.

20 JUDGE WEDEKIND: Did somebody object?

21 MR. DOOLEY: Mr. Tykulsker, were you raising an
22 objection?

23 MR. TYKULSKER: I did.

24 JUDGE WEDEKIND: Okay, sorry we didn't hear you.

25 Can you state your objection?

1 MR. TYKULSKER: Yes. For the witness was asked
2 questions about how he came to access a particular
3 document which we haven't seen and questions are being
4 asked about his departure from employment. I don't -- It
5 doesn't seem relevant and directed to the purpose of this
6 hearing.

7 MR. DOOLEY: I would join in the relevancy objection,
8 Your Honor.

9 JUDGE WEDEKIND: Would you like to explain the
10 relevance?

11 MR. STANLEY: Please. And by the way, that was my
12 last question along those lines. I was getting into some
13 of the more substance, but potential bias or motive is
14 relevant in this situation.

15 JUDGE WEDEKIND: I agree. Overruled. Did you ever
16 get an answer to the last question?

17 MR. STANLEY: I believe I did not.

18 Q. BY MR. STANLEY: Mr. Fredriksen, I don't know if you
19 heard, was there an exit interview, or even an informal
20 meeting of some kind when you resigned where you made
21 some scathing comments about the company?

22 A. BY THE WITNESS: I would say it was an informal
23 conversation with my supervisor in which I did not make
24 scathing remarks. I would not characterize them as such.

25 Q. Alright, what do you recall from that conversation?

1 MR. TYKULSKER: Objection. An informal conversation
2 with his supervisor goes to bias?

3 JUDGE WEDEKIND: Overruled. Mr. Fredriksen, can you
4 answer that question? I'm sorry, I'm muted.

5 To the extent that there's an objection, it's
6 overruled for the same reason I said earlier.

7 Mr. Fredriksen, can you answer the question about
8 this conversation?

9 THE WITNESS: Yes.

10 A. BY THE WITNESS: The conversation was about my time
11 at Exxon and what my expectations were going into the
12 role of Research Technician and how I didn't feel that my
13 expectations were fully met by the time I was ready to
14 leave the company.

15 Q. BY MR. STANLEY: Alright, we'll move on, Mr.
16 Fredriksen. You acknowledge, do you not, based on your
17 role as an employee, a former union leader, and also, you
18 said Computer Security Officer. Do I have that right?

19 A. Yeah, for a period of time.

20 Q. You acknowledge based on those roles that ExxonMobil
21 takes management and protection of information very
22 seriously, don't you?

23 A. Yes, I do.

24 Q. And in fact, when you were employed by ExxonMobil,
25 you had to review and acknowledged a number, perhaps even

1 accurate to say a countless number of IT,
2 confidentiality, management MPI as you said, policies and
3 guidelines. Correct?

4 THE WITNESS: I'm sorry. Is he breaking up for
5 anyone else?

6 UNKNOWN SPEAKER: I'm getting an echo, too.

7 JUDGE WEDEKIND: So, let's make sure everybody -- let
8 me mute myself. Could've been my problem.

9 MR. STANLEY: It looks like we all just got
10 temporarily frozen or disconnected from here. At least I
11 just got a notice that mine was unstable, so.

12 JUDGE WEDEKIND: Okay. You want to try again? Or
13 are you still unstable?

14 MR STANLEY: Am I back on, folks?

15 THE WITNESS: You're on, just please speak slowly
16 because it garbles a little bit.

17 Q. BY MR STANLEY: Mr. Fredriksen, my question was, when
18 you were employed by ExxonMobil, you had acknowledged
19 that the company takes these issues very seriously and I
20 followed that up with: In fact, when you were employed by
21 the company, you had to review and acknowledge frankly
22 countless, I think it's safe to say, IT and related
23 confidentiality, MPI type policies and guidelines. Isn't
24 that true?

25 A. BY THE WITNESS: Yes. Did you hear me? Yes. That's

1 true.

2 Q. Yeah, thank you. And when you were hired an
3 intellectual property agreement that contained a number
4 of confidentiality and other provisions. Correct?

5 A. That's correct.

6 Q. And during your tenure, you had to watch a number of
7 videos and or take a number of online training courses on
8 the importance of MPI, confidentiality, and IT related
9 issues. Correct?

10 A. That's correct/

11 Q. Let's spend some time on SharePoint. You admit that
12 not everything on SharePoint is available to employees.
13 Correct?

14 A. Correct.

15 Q. And in fact, you know, despite your role as Computer
16 Security Officer and your role in leadership, your access
17 was limited. Right?

18 A. My access was limited including the time I was
19 Computer Security Officer.

20 Q. Fair. And based on your training and, both as an
21 employee and in your role as Computer Security Officer,
22 you agree if a mistake is made relative to SharePoint
23 document status, that ExxonMobil employees have an
24 obligation, and are trained not to try and access
25 documents they suspect perhaps should be protect.

1 Correct?

2 A. Can you restate the question?

3 Q. If a mistake is made, you're on SharePoint and --

4 Let's not focus on you. An employee in general.

5 Employees at ExxonMobil are trained that if they access

6 something that they suspect might not be appropriate,

7 they have an obligation to come forward, or at least not

8 access those documents. Correct?

9 A. I had no reason, from the title of the document

10 alone to think that I shouldn't access it.

11 Q. You answered a different question. Just generally

12 speaking, when an employee does have a question, they

13 have an obligation to hold off. Correct?

14 A. Yes. If you believe that a document is proprietary

15 and incorrectly marked and you're not part of that

16 project, yeah.

17 Q. And employees are trained on that and it's actually

18 in written policies and guidelines, that obligation.

19 Correct?

20 A. That's correct.

21 Q. Now you say you had no reason to believe that, but

22 Mr. Fredriksen, if we have the correct documents front

23 and center on one of the documents, is my name and

24 designation as Labored Employment Counsel. Isn't that

25 true?

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1 A. I don't recall exactly that your name was on it, on
2 the first page.

3 MR. DOOLEY: Your Honor, I'm going to object to any
4 questions along the lines of whether he was violating
5 some company policy. That's not what we're looking at
6 here. We're looking at whether he obtained these
7 documents improperly. The question is whether, you know,
8 Respondent took the appropriate care in handling and
9 preserving the confidentiality of these documents. It's
10 not Mr. Fredriksen's responsibility to, you know, monitor
11 that their own compliance with their own privilege.

12 JUDGE WEDEKIND: Okay. Well we haven't really gotten
13 that far yet. I think that these are relevant facts to
14 know. Your objection is overruled at this point.

15 So, the last question was about your name being on
16 one of the documents. He says he doesn't remember that.
17 Do you have any follow-up questions to that?

18 MR. STANLEY: I do. Thank you, Your Honor.

19 JUDGE WEDEKIND: I'm sorry. I've been muted that
20 whole time, apparently. There was an objection, Mr.
21 Fredriksen. You may have heard that. I overruled the
22 objection that these questions. I'm going to allow the
23 attorney to ask you some more questions about the
24 attorney's name being on it, that kind of thing. Okay?
25 Did you hear me?

1 THE WITNESS: Yes, I did.

2 JUDGE WEDEKIND: Okay,

3 Q. BY MR. STANLEY: Mr. Fredriksen, I, candidly I'm not
4 confident that we have the documents we're supposed to
5 have. I suspect there's a lot more to this story. But
6 I'm looking at a document that was provided to us, that's
7 supposed to be covered by this discussion. And at the
8 very top of the page, in bold, it says Craig Stanley.
9 And about three quarters of an inch under that, it again
10 refers in bold to Craig Stanley, position L&E Counsel.
11 Does that refresh your recollection?

12 A. You're looking at the document.

13 Q. Thank you for confirming what I know. Does that
14 refresh your recollection?

15 A. That your name was on the first page of the
16 document?

17 Q. On the cover page of one of the documents that's
18 been provided to us.

19 A. I would agree that that probably is true.

20 Q. And we knew each other in April or whenever you had
21 accessed these documents. Correct?

22 A. That's correct.

23 Q. And I -- For the moment, I'm going to hold off on
24 asking names, but the colleagues that accessed some of
25 these documents. They knew me, didn't they?

1 A. I don't know.

2 Q. Mr. Fredriksen, I spoke at at least two or three
3 employee wide forums at Clinton while you were in a union
4 leadership position, didn't I?

5 A. Yes, you did

6 Q. And those forums were truly employee wide. Not just
7 bargaining unit employees, but all Clinton employees.
8 Correct?

9 A. Were you? Yeah. I mean, maybe.

10 Q. Mr. Fredriksen, I want to be clear about something.
11 The company is not coming after you. The company has no
12 interest in harassing you. What we're trying to do is
13 protect what is clearly privileged information. That's
14 very important to ExxonMobil Corporation, which you
15 acknowledged you agree with. Correct?

16 MR. TYKULSKER: Objection. That's not a question.
17 It's a potpourri in a statement. Can we ask a serious
18 question, please?

19 JUDGE WEDEKIND: Sustained. Do you want to rephrase
20 that?

21 MR. STANLEY: I will, but didn't someone raise the
22 concern that, in an objection that I was -- that
23 ExxonMobil was going to go after Mr. Fredriksen?

24 JUDGE WEDEKIND: No, no. We're talking about -- The
25 end of your question turned into a statement asking him

1 to agree with you.

2 MR. STANLEY: I'll rephrase that part.

3 Q. BY MR. STANLEY: Mr. Fredriksen, part of our training
4 at ExxonMobil, employees deal specifically with dealing
5 with privileged information. Does it not?

6 A. BY THE WITNESS: Yes, it does.

7 Q. Mr. Fredriksen, the documents that have been
8 provided to us, and I have to be very careful here
9 because we don't want to say much about the documents,
10 but I want to make sure that you know what we're talking
11 about. They appear to be some interviews and there
12 appears to be a deck on potential possibly bargaining
13 strategy. Does that sound right to you?

14 A. Yes.

15 Q. And when you accessed these documents, did you
16 access other documents? I'm sorry, I'm getting that
17 unstable signal again so I might be cutting out. Did you
18 hear that question, Mr. Fredriksen?

19 A. Yeah, you asked me if I had accessed other documents
20 at that time and the answer is yes.

21 Q. And what did you do with those documents?

22 A. Some of the documents were relevant only to the ILU,
23 which I shared with my attorney. Some documents were
24 relevant to the situation in Beaumont, which I also
25 shared with my attorney. And also notified Ricky Brooks.

1 Q. When did you access the documents that you just
2 described? First accessed those documents.

3 A. Probably -- I believe this question was asked
4 before, but probably mid April to late April.

5 Q. Okay, and I believe you testified that some other
6 employees, employee or employees, had accessed, I'm not
7 positive on this part but, similar documents before that?

8 A. Yes.

9 Q. How far before the April '22 time frame was that?
10 As best you recall.

11 A. I don't know. I can't answer that. I was notified
12 when I was notified.

13 Q. What did you do with that information? If anything.

14 A. The information that -- What do you mean?

15 Q. Information you learned and or received from your
16 colleagues who had accessed information earlier?

17 A. I looked to see if I could find them and I found
18 them.

19 Q. So it's your understanding they were the same
20 documents.

21 A. Yes.

22 Q. Did you do any subsequent document searches?

23 A. Yeah, I did a number of searches.

24 Q. After April?

25 A. I don't know.

1 Q. Can you give us any sort of time frame of when you
2 performed other such searches?

3 A. I know that when the company issues information
4 bulletins to Beaumont and the other locations about their
5 status in bargaining, we wouldn't get notifications
6 directly. We would usually have to search for them to
7 find those. So, various times.

8 Q. But you'd agree that those documents are not of the
9 type that are at a high level of protection.

10 A. They weren't protected at all.

11 Q. Okay. We agree on that. In all your other
12 searches, you referenced the -- I forget, what is it?
13 EIBs or MIBS, but not important. In your other searches,
14 did you come across any other documents, as best you
15 recall, that on their face there appeared to be at least
16 a question of whether perhaps you should be accessing
17 them or not?

18 A. Not usually. The company conducts -- what do you
19 call it -- audits every year. And they have external
20 audits and then also audits every other year internally.
21 It's not typical, no, that I would be able to just
22 stumble upon documents that I'm not supposed to see.

23 Q. And isn't it true that the only documents you found
24 were under a link referencing a Mr. Andy Stahel?

25 A. I don't remember that that was obvious on clicking

1 the link. I don't even remember what the title of the
2 documents were. Maybe just like -- They were just like -
3 - I don't recall.

4 Q. Mr. Fredriksen, again, I don't know whether what
5 we've been sent is accurate, where it's everything,
6 whether it's partial. I can't speak to that, but one of
7 the documents we were provided has a picture of who at
8 the time was a human resources employee named Andy
9 Stahel. And the picture identifies him as an HR manager,
10 and it -- The picture shows right next to the SharePoint
11 link that also says his name. Does that ring a bell as I
12 described it?

13 A. Yeah, it does. Yeah it does.

14 Q. And is that where the information I described to you
15 earlier, Mr. Fredriksen, which is the interviews and the
16 possibly bargaining strategy related deck. Does that
17 refresh your recollection that you got all those only
18 from Mr. Stahel's, one of his databases?

19 A. I don't believe that that is correct. I believe that
20 some of them were in other people's SharePoints or in,
21 even in group SharePoints. I don't think everything I
22 accessed -- In fact, I know everything I accessed was not
23 in Andy Stahel's personal One Drive.

24 Q. Well, all we have are the two types of documents I
25 described. So let's limit our discussion for now, Mr.

1 Fredriksen, to those documents. The interview, what
2 appears to be interview notes, and the possible
3 bargaining strategy related deck. That universe of
4 documents. Did you find -- Did you access those only
5 under some sort of Mr. Stahel database?

6 A. No. They were -- There was no databases. It was
7 the enterprise search and it was on one of the -- It was
8 probably the first page when you type in 'impasse'.

9 Q. So why did you take a picture of Mr. Stahel with
10 that link? At least why did you only take a picture of
11 Mr. Stahel and the link next to his picture and position
12 description?

13 A. I honestly don't remember. I think it was because I
14 didn't know who he was, so I wanted to ask Ricky if he
15 knew him.

16 Q. Didn't know, what do you mean by 'didn't know who he
17 was'? I mean, what I'm looking at shows his full name
18 and actual position, email, phone number, corporate
19 entity to which he reports. What do you mean you didn't
20 know him?

21 A. That's not enough to know somebody.

22 Q. Okay, so you just meant you didn't personally know
23 him?

24 A. Yeah.

25 Q. Not didn't know who he was or what his position was.

1 A. Right.

2 Q. Can you think -- It sounds like you're saying you
3 got information from other locations. Sitting here
4 today, can you think of any other links or any other
5 individuals that came up in your searches?

6 A. No. He's the only name that I recall. I do know
7 that there were definitely other people, but like you
8 said, I was interested in talking to Ricky about this
9 guy. I had just never heard of him. You know, just
10 wanted to talk to him.

11 Q. Did you search any -- did you make -- did you
12 conduct any searches specifically under law or HR?

13 A. No.

14 Q. What sort of search terms did you use?

15 A. I believe I already answered this question.

16 Q. Well I believe you referred to 'impasse', but I
17 think you're on -- I guess you could consider this cross
18 examination. I think we've learned about additional
19 searches. So aside from the 'impasse' search that is
20 highlighted in the documents provided to us, what other
21 searches do you recall conducting?

22 A. 'ILEU', and also the full name 'Independent
23 Laboratory Employee's Union', probably 'union'.

24 Q. How about 'Craig Stanley' or 'Stanely'?

25 A. No. I didn't search for 'Craig Stanley' directly.

1 Q. Did you search 'Jeffe Lee documents?

2 A. No. I don't think so.

3 Q. You sure?

4 A. Did I search in -- did I search for Jeffee Lee in
5 the enterprise search? No, I did not.

6 Q. Did you search her documents in some other fashion?

7 A. No.

8 Q. Josh Bryant?

9 A. No.

10 MR. DOOLEY: Your Honor. I'm sorry, I need to unmute.
11 I'm going to object to relevance. I don't understand
12 where this is going. I don't recognize any of these
13 names or what they could have to do with this case.

14 JUDGE WEDEKIND: You just want to -- for
15 clarification, who are these people?

16 MR. STANLEY: Sure. They were Human Resources --
17 long time Human Resources employees at Clinton.

18 JUDGE WEDEKIND: Okay. Overruled for now.

19 Q. BY MR. STANLEY: Last one along these -- Thank you,
20 Your Honor. The last one along these lines, Mr.
21 Fredriksen. Did you ever search VJ's documents? And for
22 everyone on, VJ was a former vice president of our
23 research division Emory.

24 A. BY THE WITNESS: I didn't search for VJ's documents.
25 I didn't search for any names directly. I told you the

1 searches I used.

2 Q. Mr. Fredriksen, you did go through some of this. I
3 just want to make sure I understand. I recall you
4 testifying, responding to Mr. Dooley's questions that you
5 think you downloaded these documents, but they were too
6 voluminous to send and you took pictures. Was that your
7 testimony?

8 A. That's correct.

9 Q. Why didn't you print the documents?

10 A. Because that's wasteful.

11 Q. How is that wasteful?

12 A. (Inaudible.)

13 Q. I'm sorry?

14 A. You're asking how printing documents is wasteful?

15 Q. Yeah. Twenty pages?

16 A. I don't understand why you're asking me why I think
17 printing electronic documents is wasteful and a waste of
18 time.

19 Q. So, that's your answer. That's why you didn't print
20 them. Because printing twenty documents is wasteful.

21 A. It's extremely wasteful, yes.

22 Q. Okay. So you took pictures.

23 A. Yes.

24 Q. And is that how you distributed these documents to
25 the -- to the folks you named earlier? I recall some of

1 your colleagues, Ricky Brooks, union, your union
2 attorney. Is that how you distributed these documents?

3 A. I did not distribute these documents to all those
4 people you just mentioned.

5 Q. Who -- I apologize. Who did you send them to?

6 A. My attorney and Ricky Brooks.

7 Q. No one else?

8 A. No.

9 Q. How did you send them to your attorney and to Mr.
10 Brooks?

11 A. Email.

12 Q. And did you save those emails?

13 A. What do you mean?

14 Q. Do you still have those emails?

15 A. I don't work for the company anymore.

16 Q. Oh, you sent them on ExxonMobil's email system?

17 A. There's no -- You can't access any other email
18 through the company's computers.

19 Q. Well you testified you took pictures. How could you
20 not send pictures on a different email or device.

21 A. You're right. You're right. I forgot. I did send
22 it on my president at ILU account.

23 Q. And so you don't have those any longer?

24 JUDGE WEDEKIND: We need to go back. I'm not sure I
25 understood what you said. I'm unmuted. So, could you

1 repeat that last answer, Mr. Fredriksen, about how you
2 sent them to Mr. Brooks. I know that -- You keep saying
3 'my attorney'. Do you mean the union's attorney?

4 THE WITNESS: Yes, I -- Yes. Excuse me. The
5 attorney for the ILEU, David Tykulsker.

6 JUDGE WEDEKIND: Okay. And could answer to that last
7 question about how you sent them?

8 A. BY THE WITNESS: I used the union's email address --
9 service. The president at ILEU dot org account.

10 COURT REPORTER: Pause. Pause because I'm really
11 getting some echo. Just give it one second.

12 MR. STANLEY: I do apologize.

13 JUDGE WEDEKIND: We're all going to try to pause.
14 We're all going to try to pause a little bit longer
15 before answering or asking questions, okay? Thank you.

16 Q. BY MR. STANLEY: Mr. Fredriksen, did you -- I'm not
17 sure I understand. This ILEU org email, was that -- Was
18 that or was that not an ExxonMobil email?

19 A. BY THE WITNESS: That was not an ExxonMobil email.

20 Q. So do you have -- Do you still have the emails that
21 you sent on the union dot org email?

22 A. No, I do not.

23 Q. You're a very technical guy. Do you know whether
24 you can access those -- there's any way for you to access
25 those?

1 A. I do know and I know that there is not, because when
2 I left the role of president, I was removed from the
3 passwords. As you should -- When the passwords were
4 changed. So yeah, I cannot access them even if I wanted
5 to.

6 Q. Sounds like you cannot. I'll take your word for
7 that, but could the current ILEU leadership still access
8 those emails as best you know?

9 A. I don't know that they still exist. I don't know
10 that they can access those emails, no. If I used it --
11 If I sent them on my devices, I don't know that that's
12 copied to a folder that's shared. I know that sometimes
13 it's not, on some devices depending on your settings.
14 That email's not saved.

15 Q. Do you know, Mr. Fredriksen, are Mr. Rogamo or Mr.
16 Myers still in union leadership? ILEU leadership.

17 A. I don't think they are. I don't -- Steve might be
18 Shop Steward, I'm not sure.

19 Q. I can get that information, thank you. Do you know,
20 when did you send those emails?

21 A. The mid April late April.

22 Q. So not too long after you accessed them?

23 A. Almost, yeah -- I would say I emailed immediately.

24 Q. And do you have any idea what Mr. Brooks or the
25 ILEU's attorney did with those emails or documents?

- 1 A. Do I know what the attorney did with the documents?
- 2 Q. Yes.
- 3 A. No. We looked at them.
- 4 Q. Neither reported back to you as to what, if
- 5 anything, they were going to do with them? Or where, if
- 6 anywhere, they were going to send them?
- 7 A. No.
- 8 Q. And you haven't sent those to anyone since then
- 9 other than Mr. Dooley?
- 10 A. What? I'm sorry, was that a question?
- 11 Q. I'm sorry. Did you hear me, Mr. Fredriksen?
- 12 JUDGE WEDEKIND: Try again.
- 13 MR. STANLEY: Mr. Fredriksen, can you hear me.
- 14 THE WITNESS: Yes.
- 15 Q. BY MR. STANLEY: Have you sent those emails to anyone
- 16 else since sending them, around the time you accessed
- 17 them, to Mr. Brooks and the ILEU's attorney?
- 18 A. BY THE WITNESS: No.
- 19 Q. You didn't send them to Mr. Dooley?
- 20 A. No.
- 21 Q. Did you send them to Mr. Flynn?
- 22 A. I don't know who that is.
- 23 Q. Okay. Do you know how the NLRB obtained those
- 24 documents?
- 25 A. No, I don't.

1 Q. We received a copy of, I believe it's a text, and
2 what I'm reading says the company MPI rule required that
3 private proprietary documents are saved with controlled
4 access permissions. If the company claims that access to
5 those documents was restricted, they would be able to
6 produce access review records. Did you hear that, Mr.
7 Fredriksen?

8 A. Yes, I did.

9 Q. Is that a text from you?

10 A. Yes, it is.

11 Q. To Mr. Dooley?

12 A. Yes, it is.

13 Q. So you didn't -- You texted him. You did not send
14 him the documents at issue today, but have you had any
15 other communications, discussions, conversations, with
16 Mr. Dooley?

17 A. Yes. We had a conversation.

18 Q. Just one?

19 A. Two conversations.

20 Q. Do you recall what those were?

21 A. It was -- I think we had a short phone call where we
22 agreed to have a longer conversation. A short phone call
23 on Friday, a longer conversation on Saturday. And we had
24 a second conversation on Sunday.

25 Q. And can you describe what you recall from those

1 conversations?

2 A. Yeah. I was asked about the documents, if I
3 remembered them, if I remembered how I accessed them.
4 Yeah, mostly around the -- how I was able to access them.

5 Q. Did Mr. Dooley ask you not to -- ask or demand you
6 not to share those documents with anyone else?

7 A. I'm pretty sure I told him I didn't have them.

8 Q. But did you still have the pictures?

9 A. I don't have them. No, I don't have that.

10 Q. Did Mr. Dooley tell you how he came into possession
11 of the documents?

12 A. He may have.

13 Q. What do you remember from that part of the
14 discussion?

15 A. This was a conversa --

16 MR. DOOLEY: I can clear that up. It's really
17 simple.

18 JUDGE WEDEKIND: Go ahead.

19 MR. DOOLEY: I think I've already explained it. I
20 got it from USW. Ricky Brooks is USW President of a
21 local and also the nationwide Exxon Counsel. He's the
22 one who got the documents from Mr. Fredriksen.

23 MR. STANLEY: One of the fact that these courts have
24 considered an inadvertent disclosure, or even whether
25 documents have been disclosed cases is the conduct of

1 counsel on the other side. Not from an ethics
2 perspective, necessarily, but just how long they delayed.
3 The role they played in potentially expanded disclosure.
4 So, I'm not going way deep on this, but I think it's a
5 legitimate source of inquiry.

6 MR. DOOLEY: And Your Honor, I would just argue that
7 what he's talking about, there is -- that kind of rule
8 applies in this situation. Where say, you guys
9 accidentally copy me on something, that's a privileged
10 communication, and then you let me know. You recall it
11 and I should get rid of it and not rely on it in any way.
12 This is a totally different situation. These documents
13 were, as far as we've heard and as far we know, out in
14 the open. Anyone could have accessed them. They could
15 be anywhere at this point.

16 JUDGE WEDEKIND: Yeah and I think both of you may
17 have some valid points about that but we can talk about
18 that later. It seems to me this witness has testified
19 that he didn't provide them to Mr. Dooley. Mr. Dooley
20 has told us when he received them and how he received
21 them. Move on from there.

22 MR. STANLEY: Will do. Thank you, Your Honor.

23 Q. BY MR. STANLEY: Mr. Fredriksen, what did you do with
24 the photos and the downloaded documents that you no
25 longer maintain?

1 A. BY THE WITNESS: I deleted it.

2 Q. When did you delete them?

3 A. I would say, I'm not sure but, shortly after sending
4 emails to Ricky Brooks and my attorney.

5 Q. Did you download those on an ExxonMobil computer?

6 A. I took pictures on a personal device.

7 Q. And downloaded them where?

8 A. I downloaded -- Yeah. And so I downloaded the
9 PowerPoint on my company laptop.

10 Q. And deleted them before you resigned from the
11 company?

12 A. The whole thing. I did a whole sweep. Everything
13 they want is...

14 Q. So you were trying to cover -- sorry, I didn't let
15 you finish.

16 A. It's a tool, like that you know, you're supposed to
17 use. I think it's -- I don't know. It used to be File
18 Sweeper. I don't remember what it's called now.

19 Q. So, you were trying to cover your tracks.

20 MR. TYKULSKER: Objection. That's not the testimony
21 and it's argumentative.

22 MR. STANLEY: It's a leading question.

23 JUDGE WEDEKIND: Overruled. Mr. Fredriksen, can you
24 answer the question? I'm sorry, I'm muted. Can you
25 answer the question, Mr. Fredriksen? Overruled. I

1 overruled the objection.

2 A. BY THE WITNESS: Okay. I was not trying to cover my
3 tracks.

4 Q. BY MR. STANLEY: Then why would you delete documents
5 that you thought were important enough to search for
6 online and send to the president of the ExxonMobil labor
7 counsel and your union's attorney?

8 A. Because I was afraid of retaliation for having them.

9 Q. So you were covering your tracks?

10 A. Not covering my tracks.

11 Q. Just trying not to get caught.

12 A. I know full -- You and I both full well know that
13 the act -- The simple act of downloading a document is
14 traceable. I knew that, but I figured keeping them is
15 worse. So I deleted them.

16 Q. But if you're downloading a document that you're
17 supposed to be accessing, it's not a problem at all at
18 ExxonMobil, is it, Mr. Fredriksen?

19 A. That's right.

20 Q. Mr. Fredriksen, I apologize if I'm asking you very
21 elementary questions here, but again, we're not sure that
22 we have the documents you think we have. But did you --
23 When you accessed these documents, did you specifically
24 check the MPI, the management of protected information
25 status?

1 A. I don't recall.

2 Q. You agree, do you not -- I'm sorry. You started to
3 say something.

4 A. I figured it out at some point but I do not recall
5 that I checked it ahead of time before I looked at them.
6 I don't think I did.

7 Q. And what you figured out at some point, is they were
8 private. Correct?

9 A. Yes. Yeah. Very -- Yeah.

10 Q. Mr. Fredriksen, there's been a suggestion in this
11 hearing that someone is still able to access these
12 documents or similar documents. Do you know anything
13 about that?

14 A. The original documents or the photographs that I
15 took?

16 Q. Could be either. I'm not sure. Do you know
17 anything about that?

18 A. I would guess that Ricky and the USW still have
19 them.

20 Q. I'm sorry. I wasn't clear in my question. That's
21 on me. I'm talking about could go to SharePoint right
22 now and view these or similar documents.

23 A. I don't know that.

24 Q. You have no information on way or the other on that?

25 A. I -- So, I heard conflicting things. I heard at

1 first that they were gone and then I heard -- somebody
2 said they were able to find them.

3 Q. Do you know who said they were able to find them?

4 MR. DOOLEY: I'm going to -- Your Honor, just again
5 to identifying other employees. Current employees who
6 could be, you know, potentially retaliated against or the
7 company could target before they have a chance to
8 potentially testify as a witnesses.

9 MR. STANLEY: We need to -- not saying we will, but
10 we need to be able to subpoena employees who have
11 information about how all this works. As we understand
12 this, Your Honor, if the union is going to continue to
13 move forward and try to enter these docs, eventually
14 you're going to want to hear from us and we're going to
15 want to make an argument under 502 that we took
16 reasonable precautions, here's the status of the system
17 in our documents. This is all relevant to that. If
18 there are folks out -- I don't -- Employees, other former
19 employees, if there are folks out there still able to
20 access. I'm not even -- First of all, let me first say,
21 I'm not stipulating that these were accessed as has been
22 portrayed, but if there are employees still able to
23 access these documents, we need to -- we deserve to know
24 that. I suggest that you would want to know that in
25 making an ultimate decision on this issue.

1 JUDGE WEDEKIND: Well I'm not inclined to go this
2 way. I don't think we need to go there. Not for the
3 purposes of this hearing. If you want to do an
4 investigation, you're free to try. But not in this
5 hearing. We need to move on. I understand that -- I
6 think you've had quite a lot of opportunity to cross
7 examine this witness and you can continue to do so, but I
8 don't think we need to get into who the other employees
9 are. Maybe Ricky Brooks, but not wider than that.

10 MR. STANLEY: Okay. Thank you, Your Honor.

11 JUDGE WEDEKIND: Sure.

12 Q. BY MR. STANLEY: Mr. Fredriksen, when you were still
13 an ExxonMobil employee, regardless of your role at the
14 time, did you ever notify a supervisor that there may be
15 a document protection issue?

16 A. BY THE WITNESS: Ever? Yeah, probably.

17 Q. Do you recall any specific examples?

18 A. No. No, I don't know.

19 Q. And you'd agree that would be very rare, unusual at
20 ExxonMobil, correct?

21 A. Yes.

22 Q. Mr. Fredriksen, starting to wind down here but as
23 best you recall, what actually showed up on your computer
24 when you first input a search term? What do you recall
25 seeing? Your very first impression.

1 A. Of what? Of all the searches or of this specific
2 documents you're referring to?

3 Q. Let's go with the search you described earlier,
4 which is your 'impasse' search.

5 A. The 'impasse' search, I think you get -- You get the
6 title of the document. You get, like an icon that shows
7 where it's saved, so it would be like a, like a One Note
8 icon, and then I think they put like little blurb, like a
9 little text excerpt from what it is, like, in the search
10 result. But I'm not sure. It's like a google search
11 except not.

12 Q. And what do you recall -- I'm sorry. Did you say
13 something else?

14 A. I said it's like a google search.

15 Q. Right. I caught that. What do you recall you did
16 next?

17 A. After what?

18 Q. After seeing what you just described.

19 A. I opened the document.

20 Q. What document was that?

21 A. There were several that were accessed. I told you
22 that. I accessed a bunch of different things.

23 Q. And you admit, do you not, that when you access a
24 document on SharePoint, there can be privacy
25 confidentiality, other markings that don't show when you

1 take a screenshot. Correct?

2 A. Yes.

3 Q. And do you recall seeing any of those markings in
4 the form in which you pulled those documents up?

5 A. I don't recall.

6 Q. Did you ever try to access any of these documents
7 from someone else's ExxonMobil computer?

8 A. You mean using their computer?

9 Q. Yes.

10 A. No.

11 Q. It was always your own ExxonMobil issued laptop?

12 A. When I accessed the files, yes.

13 Q. Mr. Fredriksen, I may have asked this before or
14 maybe you answered it in response to a different
15 question. But I just want to make sure. In all your
16 searches, did you come across any other documents that on
17 their face appeared to be legal documents or bargaining
18 strategy type documents protected under Berbiglia?

19 A. I don't know what you just said. Can you define
20 that?

21 Q. Berbiglia? Is that your question?

22 A. Yeah. What is that?

23 Q. As a former union leader, you know that for unions
24 and employers, bargaining strategy type documents and
25 communications are protected. Correct? Or privileged.

1 A. Are you trying to suggest that I was spying?

2 MR. DOOLEY: Your Honor, I'm going to object. The
3 witness is not an attorney. He's asking him about legal
4 conclusions here.

5 JUDGE WEDEKIND: Overruled, the objection. Can you
6 just answer the question, Mr. Fredriksen? I'm not sure
7 what -- I don't think he's suggesting anything. He's
8 just asking you whether you understood what the Berbiglia
9 policy was.

10 A. BY THE WITNESS: I'm not familiar with that policy.
11 I'm not.

12 Q. BY MR. STANLEY: But you're familiar with the law
13 that, again for unions and employers, bargaining strategy
14 related documents and communications are privileged.
15 Right?

16 A. Privileged. Like, yeah...

17 Q. So, my question -- I apologize. Please go ahead.

18 JUDGE WEDEKIND: Can you finish?

19 THE WITNESS: What do you mean? What do you mean
20 privileged?

21 MR. STANLEY: That one side is not entitled to the
22 other's information in that regard.

23 A. BY THE WITNESS: No. You can do information
24 requests.

25 Q. BY MR. STANLEY: Mr. Fredriksen, when you were in

1 leadership at Clinton in our years of working together,
2 or working -- Did you -- The union sent hundreds of
3 information requests. Correct?

4 A. That's right.

5 Q. And none of them asked the company for their
6 internal bargaining strategies, did they?

7 A. That's correct, because...

8 Q. And...

9 A. No, go ahead.

10 Q. No, I'm sorry.

11 A. That's correct.

12 Q. And similarly, the company never once asked the
13 union, asked you, for your internal deliberations,
14 internal bargaining strategies, or communications.
15 Correct?

16 A. Actually I don't know if that is correct. I don't -
17 - I do remember there were a bunch of information
18 requests we sent back and forth early on that were
19 refused.

20 Q. You can't think of any specific examples, though?

21 A. No. We bargained for four years and 72 sessions.

22 Q. We did, indeed. So then, again let me go back to my
23 original question. Other than the documents that the
24 company now possesses that I've described to you, do you
25 recall, in all your searches, coming across any other

1 documents that suggested they were law documents or
2 company bargaining strategy documents or communications?

3 A. I wouldn't characterize the things I saw as company
4 -- as bargaining strategies.

5 Q. So the answer is no.

6 A. No.

7 Q. No, your answer is not no? Or your answer is no?

8 A. Sorry. Repeat the question.

9 Q. It's the echo. I'm not trying to make light -- You
10 acknowledge that you came across no documents other than
11 the ones I've described to you that the company now
12 possesses. You came -- You've come across no documents
13 that appeared to be legally protected documents or law
14 related documents or documents on the company's
15 bargaining strategy deliberations?

16 A. No. No, I didn't believe that was what I was
17 looking at from anywhere else at any other time.

18 Q. If you thought everything you did was appropriate,
19 why did you immediately contact the union's attorney?

20 MR. TYKULSKER: Objection. That's -- That is -- Oh,
21 sorry.

22 UNKNOWN SPEAKER: Nope. No, David, you just muted
23 yourself. You were unmuted.

24 MR. DOOLEY: Yeah.

25 JUDGE WEDEKIND: You're muted. Can you unmute

1 yourself?

2 MR. TYKULSKER: Yeah. I'm sorry. That's privileged.
3 You're asking about his thought process, as to why he
4 contacted his attorney. I don't think that that's fair
5 subject of inquiry.

6 JUDGE WEDEKIND: I don't think it necessarily reveals
7 a confidential communication. It's trying to get at --
8 It's cross examining him about his original testimony
9 that to the extent it suggests that he didn't think there
10 was anything wrong with it. I'm not -- I don't recall if
11 he actually said that, but in my view, as long as he
12 doesn't reveal what he asked you, what you said to him,
13 it's not privileged under these circumstances. So I'm
14 going to overrule your objection to that question.

15 Mr. Fredriksen, can you answer the question 'why did
16 you contact the attorney?

17 A. BY THE WITNESS: Well I think first and foremost, I
18 contacted the attorney to find out, to confirm that
19 taking photographs is a protected act.

20 Q. BY MR. STANLEY: Any other reasons?

21 A. Yeah. To see if this constitutes -- this is like --
22 okay, I'm going to say it. To see if this constitutes a,
23 what I interpreted as, basically, a conspiracy to bargain
24 in bad faith.

25 MR. STANLEY: Hold on. I asked the question, but we

1 also said we'd try to stay away from substance of
2 documents and that answer was going there.

3 JUDGE WEDEKIND: Right. Right. So, we again -- we
4 don't want to talk about the substance of the documents.
5 Do you have any other questions to about this subject?

6 MR. STANLEY: Nope.

7 JUDGE WEDEKIND: Okay.

8 Q. BY MR. STANLEY: Mr. Fredriksen, you testified
9 earlier that you did ultimately find out they were
10 private. Do you recall whether that was before or after
11 you sent them to Mr. Brooks or to the ILEU?

12 A. BY THE WITNESS: It would have been before.

13 Q. And I believe you said this. You did not notify
14 anyone at the Clinton site, a supervisor, manager, IT,
15 HR, otherwise, about a concern that there may be
16 documents in places they shouldn't be. Isn't that true?

17 A. Have I never done that or did I not do it at that
18 time?

19 Q. In that circumstance. At that time.

20 A. No, I did not.

21 Q. Mr. Fredriksen, you have no idea whether these
22 documents are drafts or finals of any kind, right?

23 A. Again, I think this calls back to I am not -- I am
24 also not sure exactly you have.

25 Q. The ones I've described. Sorry.

1 A. The interviews? I don't think those were work in
2 progresses. I think they were a result of a thing that
3 happened. The Power Point site that I saw? I think
4 there were multiple versions of that, yeah. It was being
5 worked on.

6 Q. Okay. And you haven't seen other versions of that,
7 have you?

8 A. I did see. There were multiple versions of them,
9 yeah. Some of them were 20 slides long. Some of them
10 were longer.

11 Q. Yet you didn't take photos of those?

12 A. I did. I don't think that I took photos of all of
13 them, but more than one version at least.

14 Q. Did you send those to the individuals you referenced
15 earlier?

16 A. My attorney? Yeah. Yes.

17 Q. And to Mr. Brooks?

18 A. Yes.

19 JUDGE WEDEKIND: That was a 'yes'.

20 A. BY THE WITNESS: Yes.

21 Q. BY MR. STANLEY: Approximately how many drafts do you
22 recall?

23 A. I know that there was one that was -- I would say --
24 I don't remember if -- I think I might have only sent
25 two. But I don't know for sure. I definitely saw more

1 than two drafts, but I think I only sent two.

2 Q. Relative to the drafts you saw, are we talking 8-10?

3 18-20? Ballpark, what are we talking?

4 A. What? What's the question?

5 Q. How many drafts do you recall seeing? Separate from

6 the ones you forwarded. 8-10? More like 15-16? 18-20?

7 A. Three of four.

8 Q. Did you search for more?

9 A. After seeing the one? I mean, yeah.

10 Q. And found nothing else?

11 A. The three or four versions of the Power Point and

12 the SharePoint -- One Drive interviews. There was a --

13 There was information that was not relevant to Beaumont.

14 There was information about ILEU. I don't know. Are you

15 asking about that?

16 Q. No. Not for purposes of this question.

17 A. Then no, I sent everything I thought -- Other than

18 like redundancy, like, some of the drafts were just older

19 and had all the same stuff in them. I didn't send

20 anything else that I recall. I don't -- But I'm not

21 sure. I'm not sure. This was a long time ago.

22 Q. Mr. Fredriksen, the company, as you know, has its

23 own experts. But based on your time at ExxonMobil, it

24 sounds like you came across a rare mistake. Is that what

25 you believe?

1 A. Yeah, I would say leaving something like this in
2 open access is not common.

3 Q. Last question. I may have already asked it. You
4 don't -- You have no idea --

5 MR. STANLEY: Withdrawn.

6 Can we take a few minutes, Your Honor?

7 JUDGE WEDEKIND: Yes. Off the record.

8 *[off the record]*

9 JUDGE WEDEKIND: Any additional questions?

10 MR. STANLEY: Yes, please. Just a few, Your Honor.
11 Thank you.

12 Q. BY MR. STANLEY: Mr. Fredriksen, have you been
13 communicating with anyone during this testimony by text,
14 email, otherwise?

15 A. BY THE WITNESS: I haven't sent any emails, but I
16 believe -- Yes, I mean, broadly speaking, I've sent some
17 texts.

18 Q. On subjects pertinent to your testimony?

19 A. I don't know if it was anything specific. Maybe
20 just broad. Like you saw the one.

21 JUDGE WEDEKIND: Can you clarify what time period
22 you're asking him about?

23 Q. BY MR. STANLEY: I meant today.

24 A. BY THE WITNESS: Oh, today? No.

25 Q. Yes. Have you been communicating with anybody on

1 the subject of this document access issue?

2 A. Yeah, not today.

3 Q. Okay. And last line of questioning. Do you recall
4 the, let's go with the deck that we've discussed. Do you
5 recall how many pages the deck that you recall was?

6 A. There was one that was over a hundred pages.

7 JUDGE WEDEKIND: When you said 'the deck', you're
8 referring to the PowerPoint, right?

9 MR. STANLEY: That's what I meant, yeah. Sorry.
10 ExxonMobil jargon.

11 Q. BY MR. STANLEY: Mr. Fredriksen, we don't want to
12 discuss the substance of any of these documents, and I
13 appreciate you not doing that, so far. But is there a
14 way for you to tell us whether that hundred page document
15 is similar in substance to any of the other documents
16 we've discussed?

17 A. The hundred page one is very -- is similar to the 20
18 page one. Like, I mean my thinking is that there was a
19 shorter presentation given and then a longer presentation
20 given of the same subject. And they were both -- They
21 both existed.

22 Q. Did you come across that document in the search where
23 you input the work 'impasse'?

24 A. Yes.

25 Q. Was that one of the documents that you forwarded to

1 Mr. Brooks and the ILEU's attorney?

2 A. Yes.

3 Q. At that same time?

4 A. Yes.

5 Q. Which again, just to reset the stage, was around the
6 time that you accessed them in the April 2022 time frame.
7 Correct?

8 A. That's correct.

9 Q. How many versions of the hundred page document do
10 you recall seeing?

11 A. I mean, I would characterize that as one of the
12 versions. I already said there were about three or four
13 versions.

14 Q. So the versions that you recall were all of
15 different page lengths?

16 A. Yeah. I don't know. I'm not sure. Probably.

17 Q. And you also no longer have this a hundred page
18 document. Correct?

19 A. I don't have anything like that anymore. No.

20 Q. That's one of those that you deleted around that
21 time frame after providing them to Mr. Brooks and the
22 ILEU's attorney, right?

23 A. That's right.

24 Q. And you remember -- let's stop. I'm referring to
25 any of those three of four versions, as you've described

1 them. One you said was around a hundred pages. Do you
2 remember how many pages any of the other ones were?

3 A. I mean, specifically, no. There was one that was
4 like 20-ish pages.

5 Q. And the other two?

6 A. No, I don't remember.

7 Q. Do you remember if they were closer to a hundred or
8 closer to twenty?

9 A. I don't.

10 Q. And do you remember if they were -- I'm going to
11 start broad with all four and if you have to distinguish,
12 fine, but were they all page numbered?

13 A. Like they were all PowerPoint presentations.

14 Q. I'm sorry.

15 A. Which had slide numbers, if that's what you're
16 asking.

17 Q. And were they all sequential?

18 A. I don't remember.

19 Q. Do you recall numbers missing?

20 A. That's not something I would have even looked for.

21 No. I don't know.

22 MR. STANLEY: Don't know. Tom, thank you for your
23 time and good luck to you.

24 JUDGE WEDEKIND: Alright. Any redirect?

25 MR. DOOLEY: Yes, Your Honor. I'll keep it as quick

1 as possible here.

2 REDIRECT EXAMINATION

3 Q. BY MR. DOOLEY: Mr. Fredriksen, I think you've already
4 discussed with Mr. Stanley that you had some interaction
5 with him during your time as Union President?

6 A. BY THE WITNESS: I don't know if while I was
7 President. Either that or Vice President.

8 Q. Okay, but while you were a union official. What is
9 your understanding of Mr. Stanley's role with the
10 company?

11 A. He writes all of their proposals.

12 Q. So he's involved in negotiations?

13 A. At every location.

14 Q. Just by virtue of a document having Mr. Stanley's
15 name on it, would you assume that that document was
16 prepared for the purpose of either litigation or internal
17 negotiation strategy?

18 A. No, I wouldn't assume that.

19 Q. Do you know if Mr. Stanley has any other duties
20 related to Human Resources, unrelated to litigation or
21 bargaining strategy?

22 MR. STANLEY: Your Honor, I don't mind being talked
23 about, but objection. No foundation for how Mr.
24 Fredriksen would know what I do outside of Clinton.

25 JUDGE WEDEKIND: Outside of Clinton?

1 MR. STANLEY: I'm sorry. Mr. Fredriksen worked at
2 the Clinton, New Jersey site. His attorney referred to
3 Annandale. It's the same site. It's our largest
4 research facility.

5 JUDGE WEDEKIND: Okay. Well, you have to establish a
6 foundation with -- I hear you. Go ahead.

7 MR. DOOLEY: I can get this through another witness.
8 I'm fine with just dropping the question.

9 JUDGE WEDEKIND: Okay.

10 MR. DOOLEY: Nothing further, Your Honor.

11 JUDGE WEDEKIND: How about you?

12 MR. FLYNN: No questions, Your Honor.

13 COURT EXAMINATION

14 JUDGE WEDEKIND: I just -- Before we go to the other
15 side, if we do, I think I just have a few -- I think I
16 have a few clarifying questions. Just give me a second.

17 So early in your testimony, I believe you said
18 something about gaining access to the intranet using a
19 company laptop or personal device. When you said
20 'personal device', and then you referenced maybe and
21 iPhone, I think, whatever the device is, does it have to
22 be a company issued one?

23 THE WITNESS: No. I know that they have something
24 you can install. It's just not something I ever had and
25 it's not something everybody can get. I know that -- So,

1 when I got hired, no you couldn't do that. You had to
2 have a company issued device. At some point, they
3 introduced some program where you could, like, secure
4 your own device somehow. But I don't know anything about
5 it, really. Other than that it exists.

6 JUDGE WEDEKIND: Just a second here.

7 I think you said -- there was a question about the
8 company doing audits. I think you said every year. What
9 kind of audits were you talking about?

10 THE WITNESS: It depends on the year. They conduct
11 external, like, OIMES audits, which is -- OIMES -- I
12 couldn't -- I'm not even -- I don't remember what OIMES
13 stands for. But every other year they have an external
14 audit, where they do it, like, really thoroughly. I
15 think it's every other year. And then every other other
16 year, right, like the not every other year, the in-
17 between years, they do internal audits. Like health
18 checkups, I think they call them.

19 JUDGE WEDEKIND: Of the? Of what? What are they
20 auditing?

21 THE WITNESS: To see if anybody is keeping private,
22 proprietary, or restricted documents on open access.
23 It's like one of the number one things they look for.

24 JUDGE WEDEKIND: Okay, thank you. Let me just -- Let
25 me keep looking here.

1 THE WITNESS: Access reviews, and so if you're the
2 owner -- if you're the quote unquote owner of data, or
3 like a site, it's your responsibility as owner, to do
4 yearly access reviews. And part of the audit is making
5 sure people are doing them.

6 JUDGE WEDEKIND: Okay. For example, do you have your
7 own? Go ahead.

8 THE WITNESS: Did I have my own?

9 JUDGE WEDEKIND: Yeah.

10 THE WITNESS: No. I mean I have a personal
11 SharePoint, but it wasn't something I needed to review
12 access because I didn't even use it.

13 JUDGE WEDEKIND: And was that when you were a -- what
14 were you called? Were you a supervisor at that time?
15 What were you?

16 THE WITNESS: I was never a supervisor. I was a
17 Computer Security Officer, which is like a -- it's kind
18 of a fake made up title that came with no benefit and was
19 only just extra work.

20 JUDGE WEDEKIND: Okay. So, when it was -- you were
21 questioned about the MPI, and I believe counsel told us
22 what that means. Can you remind me?

23 THE WITNESS: I think it stands for Management of
24 Protected Information.

25 JUDGE WEDEKIND: Okay. Sounds right. And you said

1 'I figured out at some point that they were private.'

2 Can you just explain to us how you did that?

3 THE WITNESS: I think the PowerPoint Slide probably
4 had one -- Like, some slides that had proprietary in one
5 of the bottom corners. I know at least one of the
6 PowerPoints had, like, dollar amounts on how they valued
7 the bargaining proposals.

8 JUDGE WEDEKIND: And you think it was that that said
9 propriety at the bottom or? Is that what you're saying?

10 THE WITNESS: I think that one probably did. I mean,
11 I think they all did somewhere.

12 JUDGE WEDEKIND: What do you mean by 'all'? Do you
13 mean all of the slides? All of the copies? Drafts?
14 What do you mean?

15 THE WITNESS: So, all of the versions of the
16 PowerPoint, I think had a like a slide or two that would
17 have proprietary in the PowerPoint. If you're asking
18 about the interviews, those didn't have anything, right.
19 They were just, like, interviews.

20 JUDGE WEDEKIND: Okay. What does that word,
21 proprietary, mean to you?

22 THE WITNESS: Proprietary means, like, property of
23 ExxonMobil, and, like, you're not supposed to -- Like,
24 you have to have a list of the people that access it.
25 What it means -- Sorry. Can I -- Can I re-answer? What

1 it means is it's a classification in their MPI thing.
2 They have unrestricted. They have private proprietary.
3 And they have restricted. And each of those categories
4 has a required number of control points. 'Control
5 points' meaning, like, access control. Like who -- Like
6 access lists. Like who can access them. Like at the
7 other -- At the highest end, you have to encrypt your
8 files with passwords and stuff.

9 Does that answer your question?

10 JUDGE WEDEKIND: It's fine. Any follow-up to any of
11 that?

12 MR. DOOLEY: No, Your Honor.

13 JUDGE WEDEKIND: Okay.

14 MR. FLYNN: No, Your Honor.

15 MR. STANLEY: No, Your Honor. Thank you.

16 JUDGE WEDEKIND: Okay. Alright, thank you, Mr.
17 Fredriksen, Mr. Tykulsker. You are free to go.

18 MR. DOOLEY: Thank you.

19 JUDGE WEDEKIND: Thank you for your patience and
20 cooperation.

21 THE WITNESS: Okay, I'm good to go?

22 JUDGE WEDEKIND: I believe so.

23 MR. DOOLEY: Yeah, for now. Unless -- I mean, we
24 would like to get the documents in front of him and get
25 those into the record. I know Respondent's not going to

1 want to do that right now, so...

2 JUDGE WEDEKIND: No. No, I don't think I'm ready to
3 rule on it, and I think they probably want to have some
4 testimony on their own side. Right?

5 MR. DOOLEY: I'm not sure how you want to go about
6 that.

7 MR. STANLEY: We do, Your Honor. Thank you.

8 JUDGE WEDEKIND: Yeah, so. It's not going to happen
9 now but, I mean, assuming I do rule, is there any -- Are
10 you planning on calling another witness on this issue?

11 MR. DOOLEY: Yes.

12 JUDGE WEDEKIND: Alright. We'll let you go, Mr.
13 Fredriksen. It's possible you might get another
14 subpoena. I can't say. Okay?

15 THE WITNESS: Okay, thank you.

16 JUDGE WEDEKIND: Sure. We're off the record for a
17 minute.

18 *[Off the record]*

19 JUDGE WEDEKIND: Okay, so it's 4:11. We don't have a
20 witness, right?

21 MR. DOOLEY: That's correct, Your Honor. No witness
22 for now.

23 JUDGE WEDEKIND: So we're going to end for the day.
24 We'll reconvene here at 9 a.m. We're going to try to do
25 the next witness by Zoom but we're going to be in

1 separate rooms and hopefully avoid some of these audio
2 issues and everything. But we'll work it out. And then
3 after that witness, apparently the GC and the Union are
4 going to rest conditionally, or --

5 MR. DOOLEY: That's my plan at this point, Your
6 Honor.

7 JUDGE WEDEKIND: Yeah, and the company can proceed
8 with its witnesses on the merits of the case. Okay?

9 MR. SPITZ: Yes, sir.

10 JUDGE WEDEKIND: Great. Alright. Off the record.

11 *[off the record]*

12 **(Whereupon, the above-entitled matter was**
13 **adjourned at 4:12 p.m. and scheduled to reconvene at**
14 **9:00 a.m. Central on Wednesday, February 15, 2023.)**

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CERTIFICATION

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This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of ExxonMobil Corporation, Beaumont Refinery, Case No. 16-CA-276089 et al, on the 14th day of February, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

David Molinaro, Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos. 16-CA-276089 et al.

EXXONMOBIL CORPORTATION, BEAUMONT REFINERY,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC.

Place: Houston, Texas
Date: February 15, 2023
Pages: 336 through 526
Volume: 3 of 4

OFFICIAL REPORTERS

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:	
EXXONMOBIL CORPORATION, BEAUMONT REFINERY,	Case Nos.
and	16-CA-276089
	16-CA-276092
	16-CA-276702
UNITED STEEL, PAPER AND FORESTRY,	16-CA-277103
RUBBER, MANUFACTURING, ENERGY,	16-CA-278743
ALLIED-INDUSTRIAL AND SERVICE	16-CA-287615
WORKERS INTERNATIONAL UNION, AFL-	16-CA-287625
CIO.	16-CA-288417

The above-titled matter came on for further hearing pursuant to adjournment, before Administrative Law Judge Jeffrey D. Wedekind, on Wednesday, the 15th day of February 2023, at the Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas, at 9:50 a.m. central time.

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4						VOIR
5	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
6						
7	BRYAN GROSS	345				
8						
9	PHIL MATHERNA	368	473	523		468
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1		<u>E X H I B I T S</u>	
2			
3	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
4			
5	General Counsel		
6			
7	5	476	477
8			
9	Respondent 's		
10			
11	19	359	363
12			
13	20	403	470
14			
15			
16			
17			
18			
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P R O C E E D I N G S

[Time Noted: 9:50 a.m. central time]

1 JUDGE WEDEKIND: All right. This is the third day
2 of hearing in ExxonMobil. General Counsel, do you just
3 want to give us a summary of this situation with your -
4 - your case?

5 MR. DOOLEY: Yes, Your Honor. So after speaking
6 to the witness in more detail yesterday evening, that I
7 intended to call today, my understanding is the only
8 document that he would be able to confirm is still
9 accessible for sure, is one of the longer PDF documents
10 that came up yesterday, which I haven't seen at this
11 point.

12 I'm not sure whether it's relevant. Other than
13 that, the testimony would be largely duplicative of Mr.
14 Fredrickson's. So my inclination at this point is to
15 hold off on calling any potential additional witnesses
16 on, you know, the accessibility of these documents and
17 how they're maintained in this system, unless that
18 becomes an issue in dispute.

19 JUDGE WEDEKIND: Okay. So what are you doing at
20 this point? Are you --

21 MR. DOOLEY: At this point I would rest subject to
22 rebuttal and, you know, the complete subpoena response
23 and the other issues that we have outstanding.

1 JUDGE WEDEKIND: And how about the Union?

2 MR. FLYNN: The same, Your Honor.

3 JUDGE WEDEKIND: Okay. Any comment?

4 MR. STANLEY: Just on the -- we're prepared to
5 proceed, Your Honor. But just on the -- the document
6 issue, we just ask on the record that the Counsel for
7 the General Counsel, Counsel for the Union get this 100
8 page document, that they please provide it as soon as
9 possible to the Company.

10 JUDGE WEDEKIND: Okay. I don't know what to say
11 to that, but any comment on that?

12 MR. DOOLEY: I haven't received it at this point.
13 And I'll let Mr. Flynn speak for the Union.

14 MR. FLYNN: We -- we can see what we can do about
15 that.

16 JUDGE WEDEKIND: Okay. So you're saying at this
17 point you haven't found any of these documents?

18 MR. STANLEY: We haven't found any of the
19 documents. And we haven't even seen -- we don't --
20 other than what Mr. Fredrickson had said yesterday, we
21 know nothing about this 100 pager. But it sounds like
22 it might be a similar -- similar general category as
23 one of the documents and therefore would be privileged.
24 You know, and we feel strongly that we're entitled to
25 that.

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1 JUDGE WEDEKIND: Okay. So you're just saying
2 because it's privileged you would like it back?

3 MR. STANLEY: Correct.

4 JUDGE WEDEKIND: Okay. All right. It's on the
5 record, anything else? No? Okay. So are you ready to
6 call your first witness?

7 MR. SPITZ: Yes, Your Honor.

8 JUDGE WEDEKIND: Okay.

9 MR. SPITZ: The Employer calls Bryan Gross.

10 JUDGE WEDEKIND: Good morning.

11 MR. GROSS: Good morning.

12 JUDGE WEDEKIND: And you've been with us the whole
13 period?

14 MR. GROSS: Yes, sir.

15 JUDGE WEDEKIND: Okay. And could you spell your
16 name for us?

17 MR. GROSS: Bryan Gross, B-R-Y-A-N, G-R-O-S-S.

18 JUDGE WEDEKIND: Okay. Thank you very much. If
19 you would raise your right hand, I will swear you in.
20 (Whereupon,

21 **BRYAN GROSS**

22 having been sworn/affirmed, was called as a witness
23 herein, and was examined and testified as follows:)

24 JUDGE WEDEKIND: All right. Thank you very much.
25 Counsel.

1 DIRECT EXAMINATION

2 Q. BY MR. SPITZ: Hi, Mr. Gross. We haven't met yet,
3 have we?

4 A. No, sir.

5 Q. All right. I'm John Spitz, one of the Company's
6 attorneys. I'll have some questions for you. If you
7 don't hear or understand something, please stop me,
8 I'll repeat it for you.

9 A. Okay.

10 Q. And you're testifying pursuant to subpoena today?

11 A. Yes.

12 Q. All right. And you're also the -- a
13 representative for, I believe it was the National Labor
14 Relations Board at the hearing today?

15 A. I -- so I'm the staff rep for the United Steel
16 Workers.

17 Q. All right. You've been in the room the whole
18 time?

19 A. Yes, yes.

20 Q. Okay. And what's your role as a staff rep for the
21 steel workers with respect to Exxon Beaumont?

22 A. So I service the local -- Local 243 in Beaumont
23 has five different groups in the local. It's
24 [inaudible] local so I service the local, give support
25 to the elected guys on the different committees for

1 each Company.

2 Q. Okay. And you do that for Exxon?

3 A. Yes.

4 Q. Do you participate in bargaining?

5 A. Do I participate in bargaining?

6 Q. Yes.

7 A. Yes.

8 Q. Were you at the table in 2015?

9 A. No.

10 Q. How long have you been in your current role?

11 A. Officially January 1st of '22. I was out
12 temporary for my refinery job during eight months of
13 2020 and then all of '21. During the Exxon bargaining
14 that we're talking about here, I was loaned out to some
15 other locals, so I wasn't in bargaining every day.

16 Q. Okay.

17 A. So I just -- I sat in when I could.

18 Q. So you were an international rep throughout 2021?

19 A. Yes.

20 Q. In January of 2021, the first month of bargaining
21 did you attend the sessions?

22 A. No.

23 Q. Not at all?

24 A. No, I actually went back in my refinery that I
25 came out of and from October of 2020 to -- through

1 January of '21, I came back out into this role in
2 February of '21.

3 Q. All right.

4 A. So January I was not there.

5 Q. So in February -- were you back in your role when
6 the Union issued a strike notice in February of --
7 February 15, 2021?

8 A. I was.

9 Q. And when were you involved at all when the Union
10 took a strike vote in December of 2020?

11 A. No.

12 Q. Were you aware of it?

13 A. I heard about it but I wasn't -- I wasn't
14 participating at that time. I was back in my previous
15 role in the refinery.

16 Q. But you were aware that a strike vote was taken
17 before the parties started meeting?

18 A. Yes.

19 Q. Now, did you review the Company's initial proposal
20 in the month of January?

21 A. No.

22 Q. Did you review it in February?

23 A. Yeah, probably one of the offers in February,
24 around the time of the -- the strike notice.

25 Q. So it would have been the Company's last, best,

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1 and final offer?

2 A. Yes.

3 Q. And were you in meetings where that offer was --
4 bargaining meetings where that offer was discussed?

5 A. Not prior to the -- to the strike authorization
6 given in the lockout notice. Sometime -- sometime that
7 month I sat in a few meetings but I couldn't tell you
8 exactly which meeting.

9 Q. You were aware that the Union was adamantly
10 opposed to eliminating the A operator position,
11 correct?

12 A. Yes.

13 Q. And the same thing with the 50 -- the Union was
14 also aware of -- adamantly opposed to applying the 54
15 month progression against all jobs, correct?

16 A. Yes.

17 Q. And you were also aware that the Union was
18 adamantly opposed to eliminating job bidding, correct?

19 A. Yes.

20 Q. And in the meetings that you attended is it fair
21 to say that the Union very strongly verbalize this?

22 A. Yes.

23 Q. And that was from your first meeting in February?

24 A. Yeah. I mean, it was discussed I think different
25 times but -- but yeah, I would say that. That's --

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1 that's a true statement.

2 Q. Do you recall Mr. Berend or other members of the
3 Company bargaining team saying these items are not
4 going away?

5 A. Yes.

6 Q. All right. And do you recall them making it clear
7 at the table that these were must have items for the
8 Company?

9 A. Yes.

10 Q. And the Company never wavered in that position,
11 did it?

12 A. No.

13 Q. And the Union was very vocal with its members that
14 it opposed these three items, correct?

15 A. Yes.

16 Q. And in fact there were many news reports in which
17 Union officials expressed their opposite -- opposition?

18 A. Yes.

19 Q. To these items too, right?

20 A. Yes.

21 Q. So it was well known in the Beaumont public and
22 throughout the Beaumont refinery, the Exxon refinery,
23 that -- that the Union was taking a hard line on these
24 three items, correct?

25 A. Yes.

1 Q. And also that the Company was taking a hard line
2 on these three items, correct?

3 A. Yes.

4 Q. And is it also fair to say that the Company kept
5 pushing the Union committee to bring the Company's
6 proposals to a vote of its members to ratify the last,
7 best, and final offer?

8 A. Yes.

9 Q. And in fact did you review the Company's employee
10 information bulletins?

11 A. Some of them, not -- not all of them, but some of
12 them.

13 Q. And is it fair to say that virtually every
14 employee -- employee information bulletin that the
15 Company issued it said that we hope employees will have
16 an opportunity to vote on our offer?

17 A. Yes.

18 Q. And that started in January, right? If you were
19 reviewing back then, I'm sorry.

20 A. Yeah.

21 Q. There were no EIB's in January, I'm sorry. It
22 started from the very first EIB in February, correct?

23 A. Yeah, I would probably -- I could agree with that.
24 I don't know that I read them back that far back, but
25 the ones I read did say that.

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1 Q. Would it be fair to say that you read the EIB's in
2 March?

3 A. Yeah. I don't know that I read everyone every
4 time they came out, because I didn't see those unless
5 they were, you know, printed or something like that.
6 So I didn't receive them in my e-mail because I wasn't
7 an employee, but.

8 Q. Okay. So prior to the lockout being implemented,
9 would you agree that every EIB that you saw urged the
10 Union to take the Company's offer to revoke?

11 A. Yes.

12 Q. And how many would you estimate that you saw
13 personally between February and May 1?

14 A. I'm -- I don't know.

15 Q. Then in October the Union finally took a Company
16 proposal to a vote; do you recall that?

17 A. Yes.

18 Q. That would be October 2021?

19 A. Yes.

20 Q. Now, do you recall the Union presented the Company
21 with an offer on September 27th?

22 A. I don't remember the dates, but -- but there were
23 several offers -- offers made.

24 Q. So the offer -- and yeah. And let's talk about
25 the offer that was ultimately brought to a vote by the

1 Union. Do you recall that that was made at the end of
2 September? Do you recall the vote being in October?

3 A. Yes.

4 Q. So you don't recall the specific date of the
5 offer?

6 A. No.

7 Q. Do recall that with respect to the offer that was
8 ultimately voted on, what -- that there was an offer
9 before that and Mr. Morgan made some comments about the
10 offer that the Company -- that caused the Company to
11 revise its offer, do you recall that?

12 A. Yes.

13 Q. So there was some movement on the Company's part
14 which led the Union to bring the Company's offer to a
15 vote, correct?

16 A. Yes.

17 Q. And you thought that that movement was helpful,
18 didn't you?

19 A. It was -- it was a move enough to -- to bring it
20 to a vote.

21 Q. Okay. And the movement that the Company agreed to
22 make in response to Mr. Morgan's comments, included
23 seniority protection for employees who moved between
24 blending & packaging in the refinery, correct?

25 A. Yes.

1 Q. And the movement that the Company made included
2 increased protection from layoff for employees in
3 materials and business support, correct?

4 A. I don't remember the exact wording, but yeah, that
5 sounds -- I believe -- I believe so.

6 Q. There was some added protection for those job
7 classes, correct?

8 A. Yes.

9 Q. And it included a combination of the packaging
10 warehouse operator lines of -- accommodation of certain
11 lines of promotion, correct?

12 A. Yes.

13 Q. Do you recall what those lines were?

14 A. I don't recall the details of it, but I do
15 remember there was some discussion around the
16 combination of the jobs.

17 Q. And those three movements we're all in direct
18 response to suggestions made by Mr. Morgan, correct?

19 A. Yeah, or the -- I mean, the committee, yes.

20 Q. And one thing that the committee did not suggest
21 was offering ratification bonus, that -- that wasn't
22 discussed, was it?

23 A. No.

24 Q. But the Company did offer a \$500 ratification
25 bonus, correct?

1 A. Yes.

2 Q. And that is -- those four things were put on the
3 table in the October vote?

4 A. Yes.

5 Q. And is it fair to say that that offer, as best as
6 you can recall, was it made at the end of September or
7 early October?

8 A. It was made, I would say a few weeks before the
9 vote. So that's probably accurate.

10 Q. All right. So of the vote was October 16th it
11 would have been a few weeks before that?

12 A. Right.

13 Q. Now, were you aware of the decertify BMRB Facebook
14 page?

15 A. I had heard about it.

16 Q. Did you ever look at it?

17 A. I don't -- I don't believe so.

18 Q. Were you were aware that it was publicly
19 accessible?

20 A. Yes.

21 Q. Now, I would imagine -- did you hear at any point
22 that the gentleman who was posting that page -- I mean,
23 were you aware of who it was?

24 A. I was aware that most of the posts on there were
25 anonymous, or they were -- the -- their name wasn't

1 posted, they were using a general name or even -- or
2 even there were some instances where it seemed like
3 there was some aliases being used.

4 Q. Okay.

5 A. So or fake account. So we -- I had, I guess an
6 idea of who it was or maybe a few people that were
7 posted on there, but I didn't know for sure.

8 Q. But you -- okay. I assume you were -- the
9 decertification issue was important to you?

10 A. Yes.

11 Q. But you never personally looked at the decertified
12 BMRF Facebook page?

13 A. I don't -- I don't believe so.

14 Q. Okay. Did people tell you what was on it?

15 A. Yes.

16 Q. Okay. Obviously because you just testified about
17 it. Where you were aware that there were times when
18 people were posting on that Facebook page how many
19 signatures that people supporting decertification
20 needed in order to get to 30 percent?

21 A. Yes.

22 *[Long pause]*

23 Q. All right. Yeah. Okay. So you were aware of
24 what was on the page and you heard that -- that they
25 were posting numbers, correct?

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1 A. Right.

2 Q. Would you say it was pretty widely known that --
3 that the people supporting the decertification effort
4 were posting these numbers?

5 A. Yes.

6 Q. All right. And were you aware at the end of
7 September that they said they needed like a dozen
8 signatures to file a petition?

9 A. Yes.

10 Q. So at the time that the Company made this enhanced
11 offer, it was widely known that the Union -- that the
12 decertification people only needed a few signatures,
13 correct?

14 A. We didn't -- we didn't know how true their numbers
15 were for what we were hearing. We had no way to know
16 for sure that if their numbers were accurate or if they
17 were, you know, they were trumping the numbers up to --
18 to try to gain people. You know, to get support but we
19 -- I mean, I knew what they were saying.

20 Q. Right. So I mean, so they were saying they were
21 close, correct?

22 A. Yes.

23 Q. Okay. And by the way, just -- just rolling back a
24 little bit, were you involved in the meetings right
25 before the Company locked employees outs?

1 A. I attended some meetings at that time, so maybe a
2 little of the back story is, is my predecessor was
3 supposed to retire, the guy I was replacing, in June.
4 But when the lockout happened he decided to stay so
5 then there was two of us in this same assignment. So I
6 got loaned out to some other locals to help with some
7 bargaining with some other companies.

8 So I wasn't in bargaining every day with Exxon. I
9 would just attend when I could, when I wasn't meeting.
10 So I don't know, you know, the dates that I sat in. It
11 wasn't a certain day of the week or anything, it was
12 just whenever I could. So --

13 Q. Okay. Did you -- were you at the April 23rd
14 meeting when the Company made it clear that they we're
15 going to go forward with the lockout?

16 A. I don't -- I don't remember.

17 Q. Would you agree that the Company made it clear
18 across the table that the reason for the lockout was to
19 put pressure on the Union to accept the deal?

20 A. Yes.

21 Q. And they were -- they were consistent in that
22 position, correct?

23 A. Yes.

24 Q. And did you read the Company's lockout notice, the
25 letters?

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- 1 A. The letter that was given to the Union?
- 2 Q. Yes.
- 3 A. I read it -- I probably read it at some point.
- 4 Q. And -- and the Company in that letter said we're
- 5 locking people out until we get a contract, right?
- 6 A. Yes.
- 7 Q. And -- and throughout the bargaining the Company
- 8 made it clear that they were locking people out to
- 9 pressure the Union to -- to accept their proposal,
- 10 correct?
- 11 A. Yes.
- 12 Q. And that was true in April, right?
- 13 A. Yes.
- 14 Q. It was true throughout May?
- 15 A. Yes.
- 16 Q. And it was true straight through October when they
- 17 -- when they made this enhanced offer, correct?
- 18 A. Yes.
- 19 Q. Now, the Company made that offer but the Union
- 20 committee did not recommend it, did it?
- 21 A. No.
- 22 Q. In fact the committee openly campaigned against
- 23 the Company proposal, correct?
- 24 A. Yes.
- 25 Q. And the Union made it pretty clear that the

1 proposal attacked the Union's three core values of
2 seniority, job security, and safety, correct?

3 A. Yes.

4 Q. And you said that at the table or your committee
5 said that at the table?

6 A. Yes.

7 Q. And is it fair to say that that was widely
8 reported in the media as well, correct?

9 A. Yes.

10 Q. And so because in the Union's view the three core
11 values were violated by the Company's proposal, the
12 committee actively campaigned against that proposal,
13 correct?

14 A. Yes.

15 Q. And would you say that it's fair to say that that
16 was known throughout the community?

17 A. Yes.

18 Q. And clearly would have been known to members of
19 management of the Company?

20 A. Yes.

21 MR. SPITZ: What are we up to, nineteen?

22 *[Long pause]*

23 Q. BY MR. SPITZ: I've handed you what's been marked
24 as Respondent Exhibit 19.

25 **(Respondent Exhibit 19 is marked for identification.)**

1 Q. Do you recognize this document?

2 A. Yes.

3 Q. And what is it?

4 A. It was a message that was sent out to, I believe,
5 the membership and the media.

6 Q. By who?

7 A. So I sent it to the media and then the local
8 leadership sent it out through the MailChimp and I
9 believe the Facebook, I'm not sure, the local Facebook
10 page to the members.

11 Q. And -- and it you say that the USW believes the
12 Company's offer is subpar compared to industry
13 standards, correct?

14 A. Yes.

15 Q. And up until October 14th would you agree that the
16 USW believed every single offer made by the Company
17 from day one through October 14 was subpar, correct?

18 A. Yes.

19 Q. And unacceptable to the Union?

20 A. Yes.

21 Q. And the Union committee made that clear at the
22 table, correct?

23 A. Yes.

24 Q. And it made it clear to the -- the members,
25 correct?

1 A. Yes.

2 Q. And -- and it made it clear at the meeting,
3 correct?

4 A. Yes.

5 Q. And in fact you sent e-mails back and forth with
6 members of the media saying that, didn't you?

7 A. I sent updates, yes. To the -- I wouldn't say
8 back and forth but I did send some things out.

9 Q. That would have indicated the Union's opposition
10 to the Company's proposals?

11 A. Yes.

12 Q. And so in this e-mail you say in the second
13 paragraph, "The Union is in the process of educating
14 its members on the details of the offer and is asking
15 the members to stand together and vote no on this
16 subpar offer," correct?

17 A. Correct.

18 Q. All right. And then there are two pages attached,
19 were these pages attached to the e-mail?

20 A. I believe so. I'm not -- I'm not 100 percent sure
21 on that.

22 Q. Do you recognize them?

23 A. So these pages probably only went to the members
24 because the details, you know, so -- so the e-mail went
25 to the media. I would say these -- these two pages

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1 just went to the membership.

2 Q. Okay. All right. So are you saying then, Mr.
3 Gross, that the e-mail we're looking at now has two
4 attachments, vote no PDF and vote no two PDF, right?

5 A. Yes.

6 Q. So this went to the members, this -- this
7 document?

8 A. Yes. The whole packet went to the members for
9 sure.

10 Q. But you're saying that you sent -- sent the same
11 or similar e-mail without the attachments to the media?

12 A. Yeah. We didn't send anything with the kind of
13 detail on these pages to the media, because they
14 wouldn't -- you have to understand the contract to
15 understand the details.

16 Q. Sure.

17 A. So the messages to the media were -- were pretty
18 generic, so.

19 Q. And do you recall giving an interview with Channel
20 12 telling them that we oppose the elimination of the A
21 operators?

22 A. Yes.

23 Q. And we oppose a tax on our seniority?

24 A. Yes.

25 Q. And we oppose the 54 month wage progression?

1 A. Yes.

2 Q. Do you recall when that was?

3 A. No. I don't know the dates, so.

4 Q. Does -- does -- does before this vote sound about
5 right?

6 A. Yeah, I would say it was probably after we had --
7 we got the -- that offer from the Company, so.

8 Q. So in any event, there's -- there really could be
9 no doubt that it was well known to the Company that the
10 Union was digging in its heels with respect to these
11 three items, correct?

12 A. Yes.

13 MR. SPITZ: We move Respondent 19.

14 MR. DOOLEY: No objection, Your Honor.

15 MR. FLYNN: No objection.

16 JUDGE WEDEKIND: It's received.

17 **(Respondent Exhibit 19 received into evidence.)**

18 Q. BY MR. SPITZ: And do you recall the Company
19 distributing employee information bulletins about the
20 offer that was voted on?

21 A. Yes.

22 Q. And do you recall the Company encouraging
23 employees to support the proposal?

24 A. Yes.

25 Q. And the committee continued to campaign against

1 the Company proposal, right, until the day of the vote,
2 correct?

3 A. Yes.

4 Q. And in fact there were vote no signs on the, I
5 think, you know, on the front of the Union hall,
6 correct?

7 A. Yes.

8 Q. And the vote did not pass?

9 A. Correct.

10 Q. And the committee issued statements to the media
11 saying we're pleased that this didn't -- that this vote
12 didn't pass, correct?

13 A. Yes.

14 Q. And that the things, the items the Company were
15 proposal were unacceptable, correct?

16 A. Correct.

17 *[Long pause]*

18 Q. So even though the Union was not happy with the
19 Company's proposal, would you agree that throughout the
20 entire time the Company always pushed for a vote?

21 A. Yes.

22 Q. In every meeting that it had with the Union,
23 correct?

24 A. Yes.

25 Q. And in every issue, correct?

1 A. Yes.

2 Q. And every month it pushed for a vote, correct?

3 A. Yes.

4 Q. But the parties were just too far apart, would you
5 agree?

6 A. I think there was -- there was some opportunity
7 for movement that didn't happen.

8 Q. Ultimately the contract that was ratified included
9 all three items that we just discussed, correct? The A
10 operator, 54 months progression, and no seniority
11 bidding?

12 A. Yes. Some version of those three things, yes.

13 MR. SPITZ: Let me just take a minute, Your Honor.
14 I think --

15 JUDGE WEDEKIND: Can I just ask one clarifying
16 question.

17 What do you mean some version? Was it -- was it
18 the version that was proposed back in September or was
19 it something else? It was proposed before September?

20 MR. SPITZ: January.

21 JUDGE WEDEKIND: In January.

22 Q. BY MR. SPITZ: Well, yeah. There's a last, best,
23 and final offer in January.

24 A. Yeah, I'm not -- I'm not 100 percent sure if it
25 was identically the same. But it did -- it had the 54

1 months in there and the elimination of the A operator.
2 I think there were some changes on the job combinations
3 for the -- combining the jobs for the B&P plant, the
4 blending and packaging.

5 JUDGE WEDEKIND: Any follow up?

6 Q. Yeah, I mean, but fundamentally it was what the
7 Company proposed in the first place, correct?

8 A. Yes.

9 JUDGE WEDEKIND: Take a break?

10 MR. SPITZ: Yes, break would be great. Thank you.

11 JUDGE WEDEKIND: Take five minutes.

12 *[Off the record]*

13 MR. SPITZ: All right. We pass the witness.

14 JUDGE WEDEKIND: Okay. Any cross?

15 MR. DOOLEY: No questions, Your Honor.

16 MR. FLYNN: No questions, Judge.

17 JUDGE WEDEKIND: All right. Thank you. Thanks
18 for your testimony. You may step down.

19 THE WITNESS: Thank you.

20 *[Long pause]*

21 JUDGE WEDEKIND: And your next witness, is he or
22 she here?

23 MR. SPITZ: No, we're waiting on him any time.

24 JUDGE WEDEKIND: Okay. All set.

25 MR. SPITZ: No waiting, I'm saying --

1 JUDGE WEDEKIND: Oh, you're waiting.

2 MR. SPITZ: -- I'm waiting to hear from him, yes.

3 JUDGE WEDEKIND: Okay. Let's go off the record
4 then, sorry.

5 *[Off the record]*

6 JUDGE WEDEKIND: All right. Respondent, your next
7 witness.

8 MR. STANLEY: The Company calls Phil Matherne.

9 JUDGE WEDEKIND: All right. Good morning, Mr.
10 Matherne. Could you state your name and spell it for
11 us?

12 MR. MATHERNE: Phil Matherne, P-H-I-L, last name
13 M-A-T-H-E-R-N-E.

14 JUDGE WEDEKIND: Okay. Thank you.

15 Q. BY MR. SPITZ: Phil, how long have you been with
16 ExxonMobil?

17 JUDGE WEDEKIND: Just one second, let me swear him
18 in. Can you raise your right hand, I will swear you
19 in.

20 (Whereupon,

21 **PHIL MATHERNE**

22 having been sworn/affirmed, was called as a witness
23 herein, and was examined and testified, as follows:)

24 JUDGE WEDEKIND: Great, thank you very much.
25 Counsel.

1 MR. STANLEY: I was trying to get him out of here.

2 DIRECT EXAMINATION

3 Q. BY MR. STANLEY: How long have you been with
4 ExxonMobil, Phil?

5 A. For 29 years.

6 Q. And what is your current position?

7 A. I'm currently the operations excellence manager
8 for North America.

9 Q. And we'll come back to that role here in a moment.
10 But can you just summarize for us your 29 year career
11 with the Company, starting with your highest level of
12 education, please?

13 A. Yeah. I -- I graduated from the University of New
14 Orleans in 1995 with a Bachelor of Science in
15 mechanical engineering.

16 While I was in college I had done several
17 internships with the Mobil Refinery in Shell Met,
18 Louisiana which is right outside of New Orleans. I
19 started working there full time as an engineer in '95.
20 Did various roles the first decade of my career up into
21 a business team leader. At which time I left Shell Met
22 and went to work for ExxonMobil in our corporate
23 office, which was at the time in Fairfax, Virginia.

24 I did a couple roles in as an analyst and an
25 economists there and went out as an integrated event

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1 manager at our Joliet Refinery which is in Chicago,
2 Illinois. After that assignment I went to the Baytown
3 Refinery and worked as a process department head.

4 From there I went to Beaumont as an immigrated
5 event owner for an expansion and a turnaround that we
6 were working on. And then I went to headquarters as a
7 -- as a process advisor, and then went back to Beaumont
8 as a process manager and then promoted to an operations
9 manager.

10 Finally into my current role that I have now which
11 is operations excellence manager.

12 Q. All right. So let's go -- let's go back to that.
13 What are your -- what are your current duties and
14 responsibilities?

15 A. So we have roughly 18 manufacturing sites in North
16 America, or US and Canada. My role is -- is really to
17 look at all things that fall under OPS excellence
18 performance which is reliability, it's utilization,
19 with connecting the sites together for best practices.
20 I do investigations and troubleshooting, mentor a lot
21 of the -- the other process and operations managers,
22 really looking to continue to make our sites as
23 competitive as they can be.

24 Q. And Phil, we're probably use a lot of terms today
25 that some folks in the room won't -- won't be familiar

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1 with.

2 So can you explain please what do you mean by
3 reliability and utilization?

4 A. Yep. Reliability is -- is a term we use really
5 around our asset performance. It's ensuring that --
6 that our pumps and compressors and equipment is -- is
7 running and that -- and that we keep those things
8 available for when they're needed.

9 Utilization is -- is a fairly common term in
10 industry. It's -- it's a percent of how well you you're
11 utilizing your asset with -- with, you know, 100
12 percent being a full utilization. So meaning that --
13 that unit is running, if it was 100 percent all year,
14 it would be running all year it would not have shut
15 down for any reason.

16 Q. And of the 18 sites that you oversee, how many of
17 those are Union -- Union represented?

18 A. The large majority, almost all.

19 Q. And the last question about your career path,
20 Phil. I understand you're still be on the move again.

21 Can you tell us about that?

22 A. Yeah. I'm going to be moving to Singapore here
23 within the next month as the Singapore complex
24 immigration manager. Singapore has two refineries and
25 two chem plants and they're looking for somebody.

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1 Really there's a big project and some performance
2 issues and they're looking for somebody to help go
3 there and shore up the site and ready the site for the
4 expansion.

5 Q. How large is the Singapore complex?

6 A. It's -- it's one of our largest that we own.

7 Q. Can you describe for us please ExxonMobil's co-
8 operations?

9 A. Yeah. I mean, as an oil and gas company we have -
10 - and fully integrated, we really have operations, what
11 we call up-stream, down-stream mid -- mid-stream, down-
12 stream and a low carbon solution business.

13 Q. And what is up-stream?

14 A. Up-stream is -- is essentially where we have
15 production rigs, where we're pulling crude and other
16 feedstocks out of the ground and -- and, you know,
17 making it -- making that available for sale or
18 distribution to our own assets.

19 Q. Worldwide?

20 A. Worldwide.

21 Q. Onshore, offshore?

22 A. Yes.

23 Q. And tell us about mid-stream, please?

24 A. Mid-stream is our -- our -- essentially our
25 pipeline and shipping organization. So if you think

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1 through anything that up-stream has or even final
2 products that down-stream makes, our mid-stream
3 organization is really moving those products around the
4 world.

5 Q. And what is down-stream?

6 A. Down-stream is our portfolio for refineries,
7 chemical plants, lubes operations.

8 Q. And then the green energy or low carbon?

9 A. Yeah. Low carbon solution is -- is a business
10 that -- that expands, you know, a little bit multiple
11 areas. I mean, it can touch into up-stream, mid-stream
12 and down-stream, but ultimately we invest a lot in
13 green energy really looking to capture carbon and, you
14 know, sequester it or look at safe aviation fuels or
15 lower omission fuels, that's the business that -- that,
16 you know, low carbon solutions is in.

17 Q. And you've always worked in in the down-stream?

18 A. Yes.

19 Q. And let's drill down a little bit -- a little bit
20 further. Can you please describe the refining process
21 for us.

22 A. Yeah, refinery takes, you know, raw crude and
23 feedstocks that -- that we get from -- from up-stream
24 or we buy from another company. We typically get it
25 either via rail or pipeline or, you know, waterways.

1 And ultimately the refinery has multiple
2 processing units that takes that raw crude and then
3 distills that into things that we use every day,
4 gasoline, you know, diesel, propane, butane, all of
5 that comes from a refinery. A refinery also makes --
6 makes products that then either go into lubricant
7 plants or chemical plants that produces things like
8 Mobile One or the lubes that you use or greases for
9 wind turbines.

10 Or the chemical plant produces, you know, everyday
11 things. Like that water bottle that you have today,
12 sitting right in front of you, is -- is made from --
13 that plastic glid is all made from our chemical plants.

14 Q. And where does this -- at -- first of all you
15 mentioned Beaumont a few times.

16 A. Yes.

17 Q. I'm going to assume, unless you tell us
18 differently you're talking about the refinery and the
19 blending and packaging plant at issue in these
20 proceedings.

21 A. Yes.

22 Q. And I understand we have substantial operations in
23 Southeast Texas beyond that, but that's what we're
24 going to refer to Beaumont. All right.

25 A. Yes.

1 Q. Where does the crude -- most of the crude come
2 from for the Beaumont refinery?

3 A. Beaumont gets its crude from Western Canada and
4 also West Texas is the large majority. It can accept
5 crude from other places of the world, but that's the
6 large majority of what we run.

7 Q. Okay. Tell us about refining from a safety
8 standpoint, please.

9 A. Yeah. I mean in general the oil and gas industry
10 is a potential -- potentially dangerous industry. I
11 mean, you know, refining, as I mentioned, distills
12 hydrocarbons which are flammable by nature. So
13 ensuring that those hydrocarbons remain in the pipe and
14 in the equipment and maintain that at -- in safe
15 operating conditions is -- is something that we have a
16 highly trained workforce to do.

17 Q. You described earlier a bit about the refined --
18 refining process and separation, distillation things.

19 What -- how is refining different say from
20 removing water from seawater?

21 A. Yeah. I mean, a simple experiment like that, I
22 think we've all probably done that in -- in, you know,
23 high school or grammar school chemistry classes. Where
24 you take a beaker and boil water and you see the water,
25 you know evaporate and ultimately you're left with

1 salt.

2 It's very similar from the standpoint of that, but
3 the difference is, is that in high school chemistry
4 class, you're not dealing with flammable products. In
5 our industry you are. So if -- if any of that was to
6 happen to get out, which -- which has happened in
7 industry before, it can result in really bad things,
8 really bad days for a lot of people.

9 I mean, ultimately, you know, our objective is
10 always to -- to ensure that -- that we maintain our
11 sites in safe operating conditions.

12 Q. And historical -- on that note, historically how
13 is ExxonMobil's safety record?

14 A. Pretty good. I mean, I would say if you -- if you
15 look at -- at, you know, the statistics that are out
16 there for general knowledge, I mean, we're always
17 consistently one of the tops in both process and
18 personal safety.

19 Q. And just from your personal perspective on this,
20 being in operations for so long.

21 A. Yes.

22 Q. And on the down-stream side, what does -- what
23 does safety mean to you?

24 A. Safety is -- is core to -- to what we do. I mean,
25 it's -- it's where we start. All of our, you know,

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1 where it's where we start every meeting, it's where we
2 start our day, it's -- it's what we -- it's what we
3 focus on first and foremost.

4 If we can't produce a product that the world needs
5 in a safe and environmentally friendly manner, then --
6 then we won't do it. So it's -- it's just true too --
7 to the nature of who we are as a company.

8 Q. Have there been major incidences at any other
9 Texas refineries?

10 A. Yeah, there's --

11 Q. Other companies?

12 A. -- there's several -- the one that always comes to
13 mind is -- is the 2005 BP Texas City incident. There
14 was a significant incident at BP where they were in
15 startup mode from a turnaround on their isomerization
16 unit and -- and for -- there was lots of factors
17 through the -- through the CSB investigation. But
18 predominantly what happened was they overfilled the
19 tower and that -- that liquid came out of their flair
20 line and caught fire.

21 I think there was probably somewhat around 15
22 fatalities and over 200 individuals that were injured
23 from -- from that incident. A pretty significant
24 incident.

25 Q. Now, back to Beaumont. About 1,400 total

1 employees at the refinery and the B&P plant?

2 A. Yes.

3 Q. About 650 of those USW represented?

4 A. Yes.

5 Q. And just to give us a better idea of the size and
6 scope of Beaumont. The Beaumont operations, what are
7 its annual revenues, let's say in an average to better
8 market?

9 A. The annual revenue is probably around 20 billion.

10 Q. If you know, where would that generally rank in
11 like -- if it were a standalone business in say the
12 Fortune 100, 200, 500?

13 A. It would be a Fortune 200 company.

14 Q. How large is the site itself?

15 A. I think it's just sly of -- just sly of 3,000
16 acres.

17 Q. And when was it built?

18 A. 1903.

19 Q. And can you please tell us a bit about the
20 Company's presence, its footprint in Beaumont, Texas?

21 A. Yeah. From the beginning it was Magnolia and then
22 it went to Mobil and then it went to ExxonMobil, all
23 still really the same -- the same company. It just
24 really changed names. But I would say people are proud
25 to work for the plant.

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1 The -- Beaumont is proud to have them there. You
2 consistently see people walking around with ExxonMobil
3 shirts. We do a lot of volunteer work out in the
4 community and we hand out shirts. People wear it very
5 proudly. The brand name of ExxonMobil, Mobil, Mobil
6 One, I would say the community is very welcoming and we
7 appreciate being in the community. We pride ourselves
8 that we, you know, we really represent about one in
9 every seven jobs in -- in the community of Beaumont.

10 We -- we work with a lot of non-profits. We're
11 essentially the entire funding campaign for the United
12 Way of Beaumont. So there's lots of things we do in
13 the community and -- and, you know, we pride ourselves
14 because of that.

15 Q. Thank you. When did you first work at the
16 Beaumont facility?

17 A. I first started in 2015 as an immigrated event
18 owner for the crude A day turn around and -- and
19 project.

20 Q. And why were you assigned to -- to that Beaumont
21 role?

22 A. They -- your turnarounds typically start planning
23 about two years in advance, so I got there about six
24 months before. The planning effort wasn't going well,
25 it was very typical to what had been going on in

1 Beaumont for quite some time.

2 I would say it was a little bit off the rails.

3 They wanted this project, this crude day expansion

4 project and turnaround to be successful. I was told by

5 -- by the management team to go there and -- and get

6 this back on track and -- and -- and fix Beaumont.

7 Q. Not just the turn around that was off to a bad

8 start, but in general?

9 A. Yes.

10 Q. And what were Beaumont's primary problem at that

11 point, back in 2015?

12 A. Beaumont had a -- had a history of -- of hurting

13 people. They had -- they had some -- some major --

14 major unit issues with -- where they had lots of

15 shutdowns. Utilization was not good at all. I would

16 say, you know, just when you looked at overall the

17 metrics it was -- it was a site that wasn't performing

18 up to its potential and was consistently losing money.

19 Q. And what if anything was the Company considering

20 doing with Beaumont at that time?

21 A. They were considering selling it.

22 Q. And just in general term, we have operations all

23 over the world, but in general terms where did Beaumont

24 rank as -- in the list of best or worst performing

25 refineries?

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1 A. Definitely in the ExxonMobil circuit it was -- it
2 was one of the worst performing sites in the globe.

3 Q. And you mentioned the potential for -- for a sale
4 at that time. Had the Company or has the Company since
5 then sold other refineries?

6 A. Yes.

7 Q. More than one?

8 A. Yes.

9 Q. More than two?

10 A. Yes.

11 Q. And how about refining in general in the US,
12 contracting or expanding?

13 A. It's contracting. If you look across the
14 landscape, there's several companies who have either
15 sold refineries or they've shut them down, converted
16 them two terminals.

17 Q. How did you your team, you and your team aim to
18 correct the issues that Beaumont had been struggling
19 with?

20 A. I mean, we felt Beaumont was -- was a site that
21 could make money. We felt it was a site that could be
22 a good strong performer. You know, like I said, I was
23 sent there in that time frame with a couple of other
24 core members. I mean, we really dug our heels in to
25 look at what the true root causes of what the

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1 performance and problems were across all of the
2 different areas that we look at. So I think, you know,
3 it was a big undertaking, but I think we felt it could
4 change.

5 Q. And Phil, I've hopped around a bit, we're still
6 talking the 2015 time frame, correct?

7 A. Yes.

8 Q. And staying in 2015, what -- what if anything did
9 you know about the Beaumont United Steel Workers
10 contract?

11 A. I mean, I got there shortly after they had a
12 ratification vote of the contract, so, you know, I was
13 briefed on the things that had happened in 2015.

14 Q. Do you just recall -- put yourself back in 2015,
15 do you just recall what you knew, what you thought
16 about the contract in general?

17 A. Yeah. So a couple of things. I would say
18 Beaumont's contract was not -- was not very good, it
19 wasn't very favorable for us for -- at the time. What
20 we had went after was really to kind of get off pattern
21 and -- and to establish a strike notification time
22 period of, at that time 75 days.

23 You know, it was pretty -- pretty long, pretty
24 contentious bargaining so, I mean, it took a while. So
25 I remember just -- just going there on the heels of --

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1 of the employees having spent, you know, four months,
2 you know, in this -- in this mode of shadowing and
3 stuff. So I showed up shortly after that.

4 Q. Okay. So let's go -- let's focus on that -- what
5 you -- what you knew, what you recall about 2015
6 marketing.

7 You mentioned a couple of items that the Company
8 was able to negotiate?

9 A. Yes.

10 Q. What were those again?

11 A. One was -- was getting off of a pattern and the
12 other one was the -- a 75 day strike notification
13 clause.

14 Q. Okay. And if you recall, why if at all was this
15 round of negotiations important for the Company?

16 A. I mean, the Company was considering at the time a
17 -- a crude expansion, building actually a brand new
18 crude unit. They weren't quite sure exactly where in
19 the Gulf Coast they were going to put it, but -- but
20 Beaumont as well as the other sites were -- were
21 considered as a potential candidate for that.

22 So this particular contract was important for
23 also, you know, based on us if we would happen to get
24 it there, to continue to make it more competitive as a
25 site, as well as kind of create creating a window for,

1 you know, to not have a work stoppage while the project
2 was going on or commissioned.

3 Q. Why was the Company considering a significant Gulf
4 Coast area expansion at the time?

5 A. Our up-stream division is -- is working heavily in
6 the Permian Basin. The Permian Basin is in west Texas.
7 It's a basin that's very prolific, has a lot of
8 capacity to pull crude out of the ground.

9 We have a lot of operations in the Permian and --
10 and, you know, one of the things we were looking to do
11 is -- is to run -- it's always important to run as much
12 of your own asset crude that you have. So while
13 building a new crude unit somewhere in the Gulf Coast
14 made sense to match up with the amount of production
15 that we were producing in the Permian Basin to just
16 process that crude into saleable products.

17 Q. All right. You testified that Beaumont was one of
18 ExxonMobil's worst performing refineries worldwide.

19 Why then was it a contender for this historic
20 potential expansion given that poor performance?

21 A. The Permian Basin is -- has a pipeline already to
22 -- a term -- to terminals that are right by Beaumont in
23 Nederland, Texas. And Beaumont pipe to those
24 terminals.

25 So the infrastructure already exists to get crude

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1 from the Permian Basin to Beaumont. That alone was --
2 was worth between a dollar and \$2 a barrel, you know,
3 incentive to Beaumont. So the incentive was there.

4 If they were to go and put this project at one of
5 the other facilities, they would have to build that
6 infrastructure. They would have to spend additional
7 capital money to lay pipelines and to run, you know, to
8 terminals and to land that crude at other facilities in
9 the Gulf Coast.

10 Q. Phil, you seem to -- to emphasize the Company
11 moving off pattern -- in 2015 negotiations, the Company
12 moving off pattern and getting a strike notice period.
13 And we're going to have other witnesses focus more on
14 the labor Relations aspect of a lot of this.

15 But can you just briefly explain what industry
16 pattern is and the -- well, we'll come back to that.
17 And what the industry pattern is.

18 A. Yeah. So for us pattern is -- is when, you know,
19 the Union has lots of sites and different companies
20 that they represent, USW Steel Workers. It's a time
21 where all of those contractors -- contracts essentially
22 end on a common date.

23 And so, you know, it gives the Union, you know,
24 leverage to strike at multiple sites at the same time,
25 you know, if there's -- if there's something that --

1 that their agenda or something that they're trying to
2 push for.

3 Q. And was that one of the Company's core objectives
4 in those negotiations?

5 A. Yes.

6 Q. Was that related to the potential investment
7 expansion, something else?

8 A. It was related to that plus just having an
9 uncompetitive contract as well, both.

10 Q. And you mentioned the strike notice law provision.
11 Can you please tell us a little more about that?

12 A. Yeah, the strike notice is important for several -
13 - several reasons. And as I mentioned before in 2015
14 we didn't have a strike notice then. And so what
15 happens is, is we get into this 24 hour, you know,
16 rolling notification where at that point the Union can
17 strike at any point in time.

18 We learned a lot about ourselves and the site at
19 that point because this went on for -- for, you know,
20 over four months. We had managers, engineers and --
21 and supervisors that were all trained to run the site.
22 Those individuals for four months, days and nights,
23 we're having to work, you know, their own jobs as well
24 as shadowing the operators during that time period to -
25 - to be ready to potentially take over and seamlessly

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1 run the site.

2 During that time you can imagine it was extremely
3 contentious, but fatigue set in and we really had
4 towards the, you know, the middle to end of that, a
5 fatigued workforce that at that point we were concerned
6 with -- with potentially being able to run the site.

7 So having that -- that notification period allows
8 us, you know, additional time to bargain, but it also
9 allows us time to ready our workforce.

10 Q. And these -- the strike notice is that 75 days?

11 A. Yes.

12 Q. Can that notice, whether strike or lockout notice,
13 be provided before the contract expires?

14 A. No.

15 Q. So it gets the Company and the Union, an
16 additional 75 days past expiration to bargain, prepare
17 -- prepare for some sort of work stoppage, that's the
18 gist of it?

19 A. Yes.

20 Q. Were -- if you know, were Baton Rouge and Baytown
21 back in 2015 already off pattern?

22 A. Yes.

23 Q. Did they have strike notice periods already?

24 A. Yes. Yeah, Baton Rouge had a 90 day strike notice
25 and Baytown had a 60 day strike notice.

1 Q. Similar, the notice can only be provided, Company
2 or Union, after expiration?

3 A. Yes.

4 Q. So you started the -- you started to touch on it
5 in explaining the significance of the -- of the 75 day
6 strike notice.

7 But can you tell us please, a bit more about --
8 you referred to the negotiations being difficult and
9 contentious, but how were they difficult for the
10 Company during that time?

11 A. Yeah. I mean, when -- you can imagine that the
12 entire workforce is -- is -- we have to stop everything
13 else that we're working on. There's nothing else that
14 goes on other than moving our entire workforce out to
15 the field to run the site. And you can imagine that
16 this is a 24 hour operation, so we have people that are
17 there now working, you know, two shifts, day shift and
18 night shift.

19 And -- and those individuals are keeping up as
20 much as they can with their -- with their normal jobs
21 and -- and have to stay abreast of all of the things
22 that are working on the unit. And so day in and day
23 out they're having to stay abreast of that and maintain
24 that working knowledge to ensure that if -- that if it
25 within 24 hours they're told they have to operate the

1 unit, they need to be able to know where the line ups
2 are, where the valves are at, what sort of operational
3 changes we have, what sort of issues are going on in
4 the unit.

5 So it's a lot to ask somebody to kind of work both
6 and then after weeks and weeks and then months and
7 months of this, fatigue -- fatigue can, you know, set
8 it and did start to set in.

9 Q. And just so that -- just so it's clear to
10 everyone, the strike notice that the Company and the
11 Union negotiated in 2015 for 75 days, that wasn't in
12 effect at the time?

13 A. Correct.

14 Q. That's what the parties ultimately agreed --
15 agreed to four and a half months after expiration in
16 2015, correct?

17 A. Yes.

18 Q. So this -- this exhaustive work that you've
19 explained, when -- back in -- we're still in 2015.

20 When did that really start to intensify? When did
21 that happen leading up to the contract expiration?

22 A. Yeah. I mean, the work itself for the workforce,
23 I mean, I would say --

24 Q. And that's -- that's what I'm asking you, on the
25 ground, we'll talk more about -- yeah.

1 A. Yeah, on the ground. I would say -- I mean, as
2 soon as they go out there it starts to intensify. You
3 could imagine if you're a represented worker and you're
4 working next to somebody who's not, and they're
5 potentially going to take your job, there's a lot of --
6 of, you know, issues and stuff that could and did arise
7 from that.

8 But I would say, you know, easily, you know, a
9 week into it you can, you know, people start to get,
10 you know, to the point of where they're tired, they
11 need -- they need time off. And the Union is operating
12 with four shifts, so they're still constantly changing
13 over their workforce, okay. And for us, we're only
14 operating with two shifts so we don't have the ability
15 to change over our workforce. So our workforce is
16 working straight through and including weekends and
17 nights.

18 Q. And Phil, I'm going to ask you -- I'm going to ask
19 you a little more background --

20 A. Yes.

21 Q. -- on what we call EMCO at the corporation of
22 course. But when you're talking about, you know, the
23 workforce that's training and shadowing, who are we
24 talking about?

25 A. All of the engineers we have at the plant,

1 including all of our supervisors and many of our
2 department heads and managers.

3 Q. So going back to your earlier testimony, just to
4 reset the stage, these engineers, managers, and
5 supervisors are working their own ordinary full time
6 jobs?

7 A. Yes.

8 Q. Then their training, shadowing, preparing to be
9 able to take over the entire operation on literally a
10 minute's notice?

11 A. Yes.

12 Q. And that continued for those four and a half
13 months in 2015?

14 A. Yes.

15 Q. Do you know approximately, Phil, how many people
16 your -- how many engineers, supervisors, and managers
17 your training to be able to take over the operations?

18 A. It was -- it was probably 250, 300 in the refinery
19 and then, you know, another 75 to 100 in the -- in the
20 blending and packaging plant.

21 Q. And in ordinary operations it's 1,400 employees?

22 A. Yes.

23 Q. And are you preparing these supervisors, managers
24 and engineers to take over and hopefully operate at
25 full capacity?

1 A. Yes.

2 Q. Just so everyone understands the terminology,
3 Phil, what -- what is EMCO?

4 A. EMCO stands for ExxonMobil Continuous Operations.
5 It's our acronym for all of the preparation that goes
6 into and then the actual, if there's a work stoppage,
7 the actual working plan itself.

8 So it's our ability to really put together a
9 workforce that -- and all of the logistics that goes
10 around it, to be able to continue to run the refinery.

11 Q. And you just -- you've just detailed a lot of the
12 on the ground work as a contract comes close to
13 exploration and then what happened in 2015 for four and
14 half months after.

15 But while we're on this subject, give us the
16 broader view of what EMCO is, even at the corporate
17 level and take us through that, please.

18 Q. So for EMCO we pretty much start at, you know, a
19 year or so before our contract expiration. We put a
20 plan together like any project where we work through,
21 you know, all of the different -- different groups that
22 have to build up to actually execute.

23 So if you can then imagine you still have to run
24 the plant, so you still have to have maintenance, you
25 still have to have contractors, you still have to be

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1 able to receive goods and services. You still have to
2 sell your products. You still have to go through all
3 of those things and our normal workforce has roles and
4 responsibilities inside of all of that.

5 So because of that we have to then shift roles and
6 responsibilities and train our workforce into -- into
7 new jobs. So we work with public and governmental
8 affairs, we work with -- with, you know, HR, we work
9 with every contractor -- contractor. Basically putting
10 plans together knowing how we're going to be able to
11 execute this.

12 Then -- then eventually there's a whole plan for
13 if the work stoppage was to happen, you'd have to have
14 a trainee -- trained workforces. So there's all the
15 plans that go into where will people be assigned and
16 how they will be trained in order to do the job and,
17 you know, we talk specifically about the operations.
18 In operations we train our workforce the exact same way
19 we train an operator that we -- that we hire, you know,
20 off the street into the job. So there's -- there's, you
21 know, 150 hours of classroom training that they have to
22 go to, and probably double or triple that for certain
23 units on field training.

24 There's demonstrations that they have to do in
25 order to prove that they know how to do the work. You

1 know, all of that then culminates with what we call the
2 review board. We essentially sit in the conference
3 room not too dissimilar from this, with half a, you
4 know, four to six individuals that sit there for, you
5 know, essentially a half a day taking that individual
6 through a process that we call a review board, grilling
7 them on all of the different scenarios. They have to
8 sit there and hand draw the entire flow diagram of the
9 unit. They take them through all of the different
10 procedures and protocols that they have to -- that they
11 have to know and that individual has to then
12 demonstrate that they can actually work the unit.

13 And there's an outside portion where they have to
14 demonstrate that they can -- that they can do the unit.
15 It's only after that that we actually approve and allow
16 people to be qualified to then run. So all of the
17 plans have to take place and then you have to do all of
18 that to get -- to get ready for even potentially
19 operating a site. So you can imagine how much time and
20 effort and people that it takes to put that together.

21 Q. And setting aside Beaumont for the moment, is
22 there -- is there a corporate group or department whose
23 full time function is to, you know, oversee your plan
24 broadly for EMCO?

25 A. Yes.

1 Q. And you mentioned some of the other -- some of the
2 groups that the corporate EMCO folks work with, is law
3 (phonetic) involved with that as well?

4 A. Yes.

5 Q. And purchasing?

6 A. Yes.

7 Q. Logistics?

8 A. Yes.

9 Q. Pretty much all the corporate departments?

10 A. Yes.

11 Q. And we'll come back when we focus on 2021
12 bargaining about the impact and how EMCO related to
13 that. But staying back in 2015 just a bit longer,
14 Phil. How much did the company spend just on EMCO as
15 the parties bargain past expiration in 2015?

16 A. About \$30 million.

17 *[Long pause]*

18 Q. So after 2015 the three refineries in contention
19 for this -- this major Gulf Coast investment, Beaumont,
20 Baytown, Baton Rouge, all were now -- all were off
21 pattern and all had strike notice periods, correct?

22 A. Yes.

23 Q. Were -- were those the only Beaumont USW contract
24 changes that management was looking for?

25 A. No.

1 Q. And we'll come back to that as well, Phil. But I
2 want to refocus on -- on fixing Beaumont from an
3 operational perspective.

4 When -- still back in 2015. Where was Beaumont on
5 that list of three sites, for lack of a better term,
6 competing for this major investment?

7 A. At the bottom.

8 Q. And why was that?

9 A. It was mainly because of the performance. I mean,
10 I mentioned before the advantage, dollar barrel
11 advantage, but you can quickly erode that with the
12 performance of the site. If the reliability is not
13 good and your utilization is poor, and you're shutting
14 down units, then you're -- you're not making money and
15 you can erode the incentive.

16 The other two sites had very strong reliability
17 and -- and very strong, you know, utilization so they
18 were definitely at -- above Beaumont.

19 Q. All right. And covering a lot of ground here and
20 chronologically so. So I want -- so we're back --
21 we're through 2015 negotiations, you're there at
22 Beaumont, so I want to refocus back -- back on that.

23 How did things go from a performance operational
24 perspective after you got there?

25 A. So the -- the turnaround was in kind of early-ish

1 of 2016 for crude A. We implemented the -- the crude A
2 project. At that point it was -- it was intended to be
3 a 30,000 barrel day expansion on a -- on 110,000 barrel
4 a day crude unit.

5 So we implemented that during the project. The
6 project during turnaround and -- and the turnaround
7 itself, I would say both of those were considered a big
8 success. The project achieved even -- even more than
9 we -- we thought at the time it was -- I think we wound
10 up getting 50,000 barrels a day out of the project,
11 which is -- which is a huge benefit.

12 And then the turnaround itself, I mean, we
13 finished the job, you know, on time and we finished it
14 under budget. Which had been a huge problem for
15 Beaumont in the past. Most of the events that Beaumont
16 had went multiple weeks long and over -- and over
17 budget significantly.

18 And you can imagine if you -- if you have a unit,
19 the unit has to run in order for the Company to make
20 money. If it's sitting down and not making any -- any
21 product, then you're paying all of this, you know,
22 investment and salaries and energy and everything else,
23 and not making any money. So doing -- doing a project
24 and getting it done on time is -- is very important
25 for all of the different planning aspects.

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1 So I think the Company was extremely pleased. We
2 had changed a lot of -- of structural issues and
3 problems that were in Beaumont, and they saw the
4 results of that during that turnaround, for that event.

5 Q. And Phil, this is my fault, I'm afraid I set this
6 up poorly by -- you had testified earlier that -- that
7 management, I believe you mentioned Steve Cope, did you
8 not at that point?

9 A. I did. Yeah.

10 Q. Okay. Did -- management had charged you with
11 fixing Beaumont?

12 A. Yes.

13 Q. And I think I -- I referred then to turning
14 Beaumont round. So it might be too late, but you're
15 now talking about an actual turnaround from a project
16 perspective, correct?

17 A. That's correct.

18 Q. So now that we're all seeing it through that lens,
19 can you tell us a little more about, let's call it a
20 capital T, turnaround. A project turnaround, what that
21 is and a little more detail on the turnaround that you
22 successfully completed in 2016.

23 A. Okay. So -- so capital T turnaround for us, it's
24 a -- it's a fairly standard term for industry. What it
25 means is, when we take a unit, one of our processing

1 units down for maintenance or for projects, we
2 essentially take all of the hydrocarbon out, we
3 chemical clean the unit, and then we open up the
4 majority of our equipment, we make repairs to that
5 equipment, so that it can make another run.

6 Typically there is essentially around four or five
7 years between turnarounds, capital T turnarounds, where
8 it's, you know, it's kind of a repeat cycle. So for us
9 we were shutting the crude unit down. We were putting
10 in a capital project, where we were doing hundreds of
11 tie-Inspector, hundreds of piping connections in order
12 to -- to reconfigure the unit and to -- and to run
13 additional crude, as well as -- as clean the unit and
14 inspect the unit and ready the unit to make another
15 successful maintenance run.

16 Q. And give us an idea, please, of the scope of this
17 turnaround. The number of employees and contractors
18 involved for example.

19 A. Yeah. So we would have had, you know, well over
20 100 employees, 100 to 150 employees. Probably 1,500
21 plus contract workforce, just immediately on the unit
22 itself. Not to mention, you know, engineering firms
23 and planners and things that were -- where we were
24 getting procurement and materials back and forth. But
25 a pretty significant event and it typically goes for,

1 you know, a month and a half.

2 Q. And then you -- you complete this widely
3 successful turnaround crude unit expansion. Still in
4 2016. Beyond that, how had -- how it -- how was
5 Beaumont performing?

6 A. We were performing better. I mean, we had
7 operationally we had seen some improvements. I think
8 it was -- it was one of the better years we had had
9 probably in a decade. I would say, you know, at the
10 time Steve Cope was our regional director. I can
11 remember us representing results of this to him and --
12 and, you know, I remember Steve's comment, it was one
13 datapoint doesn't make a trend. And that's great that
14 you guys achieved that success in '16, but we need to
15 see it continue, we need to see it get -- get more
16 competitive. We need to see you guys continue to be
17 able to produce that year in and year out.

18 Q. Was Beaumont at that point still a contender for
19 this investment?

20 A. Yes.

21 Q. Let's go back to this -- this potential
22 investment, how was the company going to create this
23 additional capacity to refine this Permian Basin west
24 Texas crude?

25 A. I mean, we were essentially building a new

1 refinery. I mean, we're building a new plant. The
2 integrating it into an existing plant helps because you
3 already have some utilities. So if you think -- I'm
4 not sure how much people know about manufacturing and
5 refining, but you need steam, you need nitrogen, you
6 need air, you need water, you need those sort of things
7 in your production. And so an existing facility has
8 it, so that -- that's already there.

9 But outside of that, it -- everything else was --
10 was new. I mean, it's -- it's a 250,000 barrel a day
11 crude unit and -- and hydrotreaters to make finished
12 jet fuel and diesel, all of that's being constructed
13 and built there with a flair system and -- and cooling
14 towers. And so I mean, it's pretty massive, it's
15 pretty big. It's about the size of -- of what would be
16 considered a medium size refinery in the United States.

17 Q. And back in 2015 how many barrels did Beaumont
18 Refinery produce per day?

19 A. 380,000.

20 Q. And at that time where did that rank among, not
21 just ExxonMobil but all refineries in the US?

22 A. It put Beaumont in the top ten.

23 Q. And how much capacity, how many barrels per day
24 would -- would this new -- new investment, new
25 expansion, new crude unit, have added to that?

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1 A. A minimum of 250,000.

2 Q. And together with Beaumont's existing production,
3 where would that have put Beaumont on the list of top
4 US refiners?

5 A. It would be -- Beaumont would be the largest US
6 refinery in -- yeah.

7 Q. And what was the estimated total investment?

8 A. A little more than 2 billion.

9 Q. B, B?

10 A. B.

11 Q. Two billion.

12 A. Yes.

13 Q. You touched earlier on, I'm paraphrasing here, but
14 Beaumont was far behind Baytown and Baton Rouge from a
15 performance perspective. But Beaumont had that built
16 in infrastructure advantage, specifically the pipelines
17 already, Correct?

18 A. Yes.

19 Q. I don't remember if you mentioned this, but do you
20 recall about how much that would have -- just that in
21 itself, the existing infrastructure would have saved
22 the Company?

23 A. Yeah, it was a dollar, two dollar -- close
24 probably \$2 a barrel.

25 Q. So you're talking in very rough numbers about a

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1 \$500,000 per day advantage for Beaumont?

2 A. Yes.

3 Q. But at least early on despite that Beaumont was
4 last on the list of three?

5 A. That's correct.

6 Q. All right. Let's -- let's briefly jump to the end
7 of that -- that story. Which site did the Company
8 ultimately chose?

9 A. They ultimately chose Beaumont.

10 MR. STANLEY: Your Honor, we'd like to show just a
11 very brief, I believe it's two and a half minutes, just
12 a video on -- on this project. Just to give everyone a
13 visual in summary of what it is.

14 JUDGE WEDEKIND: How are we going to do that?

15 MR. STANLEY: That's what others are for.

16 JUDGE WEDEKIND: You're going to put this in
17 evidence? You're going to put it in evidence? Okay.
18 So it's going to be projected up here? All right.
19 Let's go off the record, thank you.

20 *[Off the record.]*

21 *[Audio played.]*

22 JUDGE WEDEKIND: All right. Back on the record.

23 MR. STANLEY: Sorry.

24 JUDGE WEDEKIND: Go ahead.

25 Q. BY MR. STANLEY: Phil, who is Rozena Dendy in that

1 video?

2 A. She's the plant manager.

3 Q. And have you watched that video?

4 A. Yes, I have.

5 Q. And does it accurately reflected information on --
6 on Project BLADE?

7 A. Yes.

8 MR. STANLEY: Your Honor, we'd move to enter as a
9 demonstrative or illustrative exhibit.

10 JUDGE WEDEKIND: Are you going to give it a name,
11 a number?

12 MR. STANLEY: Exhibit 20.

13 **(Respondent Exhibit 20 is marked for identification.)**

14 MR. STANLEY: Yeah, Respondent 20, please.

15 MR. DOOLEY: Your Honor, I don't know how relevant
16 it is, if they want it in his background evidence it's
17 probably not a huge deal and I probably don't want to
18 fight about it, but I would just like to see the whole
19 thing before I, you know, agree that it should go in.
20 And usually when there's a video or audio introduced,
21 then we need to have a transcript as well. I don't
22 know if you guys want to jump through all those hoops
23 just to get the thing in.

24 JUDGE WEDEKIND: What's it being offered for, the
25 truth of anything in it?

1 MR. STANLEY: No, Your Honor.

2 JUDGE WEDEKIND: I didn't see anything that made
3 it worthwhile putting in. I mean, you actually have a
4 very good witness here and he gave us a lot of detail.

5 MR. STANLEY: We're fine with it. Again, my goal
6 --

7 JUDGE WEDEKIND: I can visualize it in my head.

8 MR. STANLEY: Understood.

9 JUDGE WEDEKIND: Okay.

10 MR. STANLEY: We're good.

11 JUDGE WEDEKIND: Do you want to withdraw it?

12 MR. STANLEY: I'll withdraw.

13 JUDGE WEDEKIND: Okay.

14 Q. BY MR. STANLEY: All right. Phil, we jump to the
15 -- the head of the story just to lead into -- to the
16 video. But I want to go back in time again.

17 At what point did Beaumont move from last place to
18 at least more of a contender?

19 A. Somewhere in the 2018 timeframe. I mean, we had
20 put up at that point in the time '16, '17, '18. We put
21 up really three good years of performance and at that
22 point it really catapulted Beaumont from -- from the
23 worst of those three to the first of those three.

24 Q. And when were -- when was the decision ultimately
25 made? I don't think you covered that.

1 A. Towards the end of 2018.

2 Q. Towards the end of 2018, okay. And when did you
3 leave your role at Beaumont after the successful
4 turnaround and crude unit expansion?

5 A. I left in -- in mid -- in, you know, after the
6 expansion so mid-2016.

7 Q. And where did you go from there?

8 A. I went to a process advisor role in -- in
9 headquarters which is in Spring, Texas working for
10 Steve Cope.

11 Q. And what did you do in that role?

12 A. I was responsible for North American refining. I
13 would consider it, you know, process excellence, so I
14 mean, just working with the process managers and those
15 leadership teams making sure that -- that we have, you
16 know, the highly trained workforce and sharing best
17 practices. Really kind of digging into all of the
18 things that make us, you know, operational excellent at
19 our sites.

20 Q. Was EMCO under your purview?

21 A. Yeah. So we had talked earlier around kind of
22 some of the broader corporate things at EMCO. That
23 role, that process advisor role is -- is the lead for
24 North America EMCO.

25 Q. And do you know how long the Company has had EMCO?

1 A. Since -- I mean, before my 29 years with the
2 Company.

3 Q. You mentioned Steve Cope. What was his position
4 at the time again?

5 A. Steve was the regional director, which is
6 essentially the head of refining. All of the refinery
7 managers in North America reported to Steve.

8 Q. Did your role at that time involve labor relations
9 at all?

10 A. Yes. From the standpoint of, you know, anytime
11 any of the sites in US or Canada, their contracts came
12 up, my role was to -- was to really not only help
13 prepare them from EMCO but also to help them understand
14 the kind of competitive nature and the landscape of
15 what else is going on. So work through some of the
16 strategy things that they would go after in bargaining.

17 Q. Let's move forward to 2017 now. What was your
18 role at that time?

19 A. In 2017 I came back to Beaumont as the process
20 manager. We had our operations manager at the time,
21 Simon Penn who was leaving the site, he was retiring.
22 They had saw that the site was -- was at, you know, a
23 year and a half to really putting up some good numbers.
24 I was part of that -- that transformation and they
25 wanted me to come back to really, you know, solidify

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1 operations and really continue to move the site to make
2 it, you know, more competitive.

3 Q. And what is the hierarchy of managers at a large
4 refinery like Beaumont?

5 A. So we have Rozena Dendy which would be the plant
6 manager. And then in Beaumont there's an operations
7 manager role which essentially takes all of the
8 mechanical and maintenance work, all of the operations
9 and then process and personal safety under it, and then
10 there's a -- a process manager. So refinery manager,
11 operation manager, and then process manager.

12 Q. And Rozena, Ms. Dendy effectively is a Fortune 200
13 CEO?

14 A. Yes.

15 Q. And then on down the executive levels there's as
16 you described?

17 A. Yes.

18 Q. Why did the Company return you to Beaumont?

19 A. In my roles in Baytown and Juliet, and then in my
20 crude A event owner role, just the proven practice of
21 really transforming organizations, improving
22 organizations, changing performance. So the work that
23 I did in Beaumont, my familiarity with Beaumont was
24 important. It was important for us to have a
25 consistency of a leadership and purpose there. So

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1 bringing me back just made lots of sense.

2 Q. And what if anything was the charge, this specific
3 charge that Mr. Cope or management in general gave you?

4 A. As I mentioned before, I mean, Beaumont was
5 uncompetitive across practically everything. Every
6 component of the business. And so we were working
7 through and picking it apart, working through each item
8 at a time.

9 We work through the turnarounds and projects. We
10 were working through the maintenance space. We had
11 done a lot of work in operations. We were -- we were
12 just systematically going through that. So when I
13 left, I mean Steve told me explicitly that we hadn't
14 made a decision on -- on the investment on where it was
15 going to go. He felt it was important that -- that we
16 needed to improve Beaumont across all aspects of the
17 business, including labor relations or we weren't going
18 to get, you know, the BLADE there. We were going to
19 have to put it in somewhere else.

20 Q. And when you said labor -- excuse me. When you
21 say labor relations, what do you mean by that?

22 A. Specifically the contract. We -- when you look at
23 the contract for Beaumont, it's -- it's -- the way it
24 was laid out was one of the most uncompetitive
25 contracts for us as a Company.

1 Q. So when -- in your new role, move us forward. Did
2 Beaumont continue to improve operationally, take a step
3 back, tell us what happened.

4 A. Yeah, we -- each year we made substantial
5 improvements. Six -- like I said, '16, '17, '18 were
6 great years. Eventually the Company has something
7 called the President's Award. It's an award that the
8 president of our company hands out for the best
9 performing asset in the globe.

10 In order to be even considered for the -- for the
11 award, you have to put up three consecutive years of
12 excellence performance. Performance that meets, you
13 know, the top criteria as we judge ourselves against
14 competition globally. Beaumont received that award in
15 2021 and 2020, which means that if you take that
16 forward the prior three years and then four years, you
17 can -- you can see and sense the performance
18 improvement that we made.

19 Prior to that we would go -- our plant manager
20 would go to these award ceremonies each year and
21 Beaumont was getting no awards. And we were now
22 getting awards across all of our categories and getting
23 the President's Award. We were the only refinery in
24 the globe to actually receive the President's Award. I
25 mean, on top of that if you -- if you -- you know, I

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1 purchased the water heater recently, mine had broke. I
2 wanted to make sure I got a highly efficient water
3 heater. So you go there and you look at the little
4 blue sticker that the government issues to say this is
5 a high efficiency water heater. You can see it on lots
6 of products.

7 That same sticker that the government issues, they
8 issue it for industry as well. It's the exact same
9 thing. We have it on a big old plaque, Beaumont has
10 now received the Government's Efficiency Award two
11 years running. And -- and before that was essentially
12 unheard of for -- for that site. So just to kind of
13 show the progress we made, and the performance
14 improvement across every aspect of our business.

15 Q. When did the Company announce, at least
16 internally, that it had chosen Beaumont for this
17 massive expansion?

18 A. Towards the end of '18.

19 Q. Did it get a name at that point or sometime
20 earlier?

21 A. It did, yeah, BLADE, Beaumont, Light, Atmospheric,
22 Distillation Expansion.

23 Q. Was that decision final?

24 A. I mean, I would say that it was a decision to go -
25 - to go start breaking ground and investing money. I

1 mean, it was still -- Steve was very clear that -- that
2 we could still pull this back if Beaumont doesn't
3 continue to improve. I think it was probably a year
4 later before it was announced publicly and it was made
5 final and official.

6 Q. So when 2018 time frame, 2019 we're still under
7 the 2015 agreement with the steel workers, correct?

8 A. Yes.

9 Q. And you've described frankly transformation or
10 improvement from an operational perspective at
11 Beaumont. Were you able to achieve any further
12 improvements of the collective bargaining agreement
13 following getting off pattern and getting the 75 day
14 strike notice?

15 A. No, we weren't. Not for lack of trying. I mean,
16 we -- you know, through that bargaining period we tried
17 to work several -- several things and several items
18 with the Union. In Beaumont we have a multitiered
19 classification level for operators. We call it the A
20 operator. The A operator role is a role that -- that
21 if you work in that role -- if you work as a different
22 operator, so you have an A operator, you have the
23 system operators, and you have trainees.

24 Well, the way the contract is structured the
25 assistant operators and trainees aren't allowed to work

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1 in the A -- in the A classification. They can decline
2 working in that. And then if they're not, you know,
3 trained they can't work in there. I had described a
4 little bit before around the 2005 explosion at BP Texas
5 City.

6 The reason that's important is because the -- the
7 American Petroleum Institute after that explosion,
8 created a document API 755 that is specifically around
9 fatigued management. Fatigue and fatigue management
10 had played a significant impact and role into that --
11 into that explosion.

12 Since then there's fatigue management guidelines
13 that we follow at our sites. And if you think about
14 fatigue overtime plays a huge role in employee being in
15 fatigue. Beaumont's overtime is among some of the
16 highest that we have in our circuit and for that matter
17 in industry. And one of the things we were going after
18 was trying to reduce fatigue and reduce the amount of
19 overtime.

20 The tiered operator classification and that A
21 operator role had a lot of overtime built into it. So
22 all of that being said, what I did was I had worked up
23 a couple of different plans looking at some things that
24 we had spoken to the Union about years prior. We had
25 gotten into a conference room with -- I did, with one

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1 of my operation leaders and a couple of the members of
2 the -- of the Union, and I drew on a white board a
3 couple of different options, a couple of different
4 scenarios that we could do, that we could pilot.

5 We meant -- you know, what I mentioned to them was
6 we can try, you know, a couple of different approaches
7 in different areas with no commitment from either side
8 knowing that this would -- would have to, you know, be
9 bargained or agreed to. But trying to do something to
10 get to the point where we would have less fatigue,
11 where we would have less overtime.

12 And after going through that and explaining it and
13 trying to do a pilot -- pilot with an opt out clause,
14 for either side, ultimately the -- the Union decided
15 they didn't even want to participate. They didn't want
16 to have a pilot, they didn't want anything to do with
17 it, and decided, you know, they weren't going to
18 support even trying or attempting to -- to address it.

19 Q. Yeah. And you've -- again, I just want to make
20 sure we've covered a lot of ground chronologically.

21 Negotiating a new contract in 2015.

22 A. Yes.

23 Q. And that ran through early 2021, correct?

24 A. That's correct.

25 Q. So you're bargaining the -- when you raised A

1 operator, tried to get some more with the Union, you're
2 talking mid contract?

3 A. That's correct.

4 Q. Okay. Unsuccessful?

5 A. Unsuccessful.

6 Q. What was your understanding as to why -- as to why
7 the Union had no interest?

8 A. To protect the overtime for the operator.

9 Q. So moving forward under the 2015 contract, was Mr.
10 Cope still pressing you on the -- on improving the
11 contract?

12 A. Yes.

13 Q. So what was your plan from there? You were not
14 successful in trying to work on the A operator, what
15 was your plan if anything?

16 A. Our plan was to address it in bargaining in 2021.

17 MR. STANLEY: Your Honor, it's noon. If -- we
18 request that we break for lunch now, it's a good --
19 it's a perfect breaking point in his testimony. We
20 were about to lead in now to actual bargaining for --

21 JUDGE WEDEKIND: For 2021?

22 MR. STANLEY: Yeah.

23 JUDGE WEDEKIND: All right. Okay. Let's take an
24 hour, come back at one o'clock. Perfect.

25 MR. STANLEY: Thank you.

1 JUDGE WEDEKIND: Off the record.

2 [Off the record]

3 Q. BY MR. STANLEY: Phil, you testified about your
4 five or six years in corporate management and your
5 multiple roles at or over Beaumont.

6 During that entire time period, as we head into --
7 catching -- catch up to 2021 negotiations in a moment,
8 but during that entire time period did anyone ever tell
9 you to try to get rid of the Beaumont Union?

10 A. No.

11 Q. To recap, as we head into to 2021 bargaining, you
12 had testified that Beaumont moved off pattern, got the
13 strike notice in 2015, dramatically improved its
14 performance and was ultimately chosen for the \$2
15 billion BLADE investment, correct?

16 A. Correct.

17 Q. But you still had to improve the USW contract,
18 correct?

19 A. Yes.

20 Q. So 2020, were you still at Beaumont?

21 A. Yes.

22 Q. And what was your role at that time?

23 A. I was promoted to the operations manager.

24 Q. And you -- I believe you went through the
25 hierarchy earlier, that's the number 2 position at the

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1 Beaumont complex, correct?

2 A. Yes.

3 Q. And what role, if any, did you have in the -- the
4 Beaumont USW 2021 negotiations?

5 A. A couple of roles. I was the lead for EMCO, so
6 all of the operations was under my portfolio. So I was
7 the lead for developing and implementing to make sure
8 we were ready for EMCO. As well as on the bargaining
9 team for, you know, to develop strategy on what things
10 we would discuss at the table for bargaining. As well
11 as -- as at the table for -- for bargaining as well.

12 Q. And was there a team tasked with formulating the
13 Beaumont's bargaining strategy overall, strategy and
14 goals?

15 A. Yes.

16 Q. And who was on that team, if you recall?

17 A. Myself, Andy Stahel who is -- was an HR advisor
18 for -- at Beaumont. Blake Berend, who was the HR
19 manager, and we also had Jay Davis who's a corporate
20 rep for labor relations. He's the corporate head. And
21 Craig Stanley, our corporate lawyer for labor
22 relations.

23 Q. And when did the team start preparing for 2021
24 bargaining?

25 A. In early January of 2020.

1 Q. And how often would you say the team meet
2 throughout 2020?

3 A. Several times. Monthly, or more depended on, you
4 know, what was going on.

5 Q. As we got closer?

6 A. More often.

7 Q. What did the -- what did the team's early 2000
8 negotiation strategy, what are some of the issues it
9 focused on? Or some of the approaches are focused on,
10 I should say?

11 A. In early 2020 at that point we were -- we had
12 BLADE approved and that was working so -- working
13 meaning that that had, you know, people out in the
14 field, construction happening and things like that.

15 So we had really considered a couple of
16 approaches, one was to just roll their contract and --
17 and, you know, don't go after anything and, you know,
18 just extend it and to avoid any conflicts with BLADE.

19 And then the other was we -- we, you know, and
20 looked at all of the areas where we knew the contract
21 was unfavorable. And really trying to look at
22 different things that we had gone after in the past and
23 things that we needed to go after now to potential have
24 a competitive contract.

25 Q. And I guess, what side of that debate or which of

1 those two approaches would you say was leading, if any,
2 in -- in early 2020?

3 A. Probably more so towards a role, but we were kind
4 of going back and forth between both. A lot of it was
5 really centered around -- around BLADE at the time and
6 not really wanting to be disruptive to a \$2 billion
7 project.

8 Q. And was -- was there any -- what if at all was
9 significant out time about early 2021 relative to
10 BLADE?

11 A. I mean, it would have been at the peak of
12 construction with, you know, 1,500 plus contractors
13 coming in and out of the gates. There was just going
14 to be a lot of activity and work going on.

15 Q. And that's why the company was seriously
16 contemplating a role at that point?

17 A. Yes.

18 Q. Did the bargaining team -- let's focus on 2020.
19 Did the bargaining team have to run its -- its
20 objective and potential approaches by management?

21 A. Yes.

22 Q. Did you ever -- did the team -- did the team ever
23 settle on the role strategy and at any time present
24 that to management?

25 A. No.

1 Q. Why not?

2 A. In March of 2020 something called COVID happened
3 and when that took place, I mean ultimately it was
4 probably the worst -- one of the worst times I've ever
5 seen in our industry. We were bleeding out cash. I
6 mean, the Company was losing hundreds of millions and
7 eventually billions of dollars. We were laying off our
8 workforce. We laid off 15,000 employees worldwide.

9 You know, for us when it came down locally was the
10 senior management said we need to cut expenses
11 everywhere in order to really kind of hopefully sustain
12 and, you know, this issue. So when -- when that
13 happened, when we were going through and looking at --
14 at where we were in our plans, BLADE was paused. It
15 was -- it was decided that it wasn't going to be --
16 going to be pursued at that point in time. We
17 cancelled, I think like \$20 billion of capital projects
18 around the world and BLADE was one of those projects
19 that was pushed off.

20 So in all of that when we -- when we sat back and
21 looked at where we were as a site, we needed to
22 continue to pursue our competitiveness and -- and also
23 help the corporation out to make sure that we were
24 looking at all aspects out of our business. So this --
25 this is, you know, ultimately the time to look at that

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1 contract.

2 Q. And in the early phase, you know, COVID hits and
3 you changed -- change the direction of preparation and
4 strategy.

5 Was management on board with that in principle?

6 A. Yes.

7 Q. And at that time, as best as you recall, what --
8 what particular contracts and efficiencies did the
9 Company want to fix?

10 A. Well, it was a few. I would say I mentioned the A
11 operator before, that was definitely one. A couple of
12 the other big ones were around bidding. There's
13 something in the contract that allows somebody just
14 solely based on seniority to -- to bid or to, you know,
15 to select themselves into an open position, an open
16 job. So that was something that was somewhat unique in
17 our system to -- to Beaumont.

18 We also had a wage progression. We had kind of
19 looked at where we were and where we stand and our wage
20 progression was some of the shortest in the -- in the -
21 - in kind of our local area and our competitors.

22 And then that's probably the last big one I would
23 say was really around -- around the blending and
24 packaging plant wages. The wages at the blending and
25 packaging plant, when we compare it to other blended

1 and packaging plants that we owned, where we compare it
2 to -- to similar roles that those individuals do in --
3 in other industries that are very, very similar, like a
4 package operator and a forklift operator, we're paying
5 substantially higher, like 30 to 40 percent higher wage
6 rates to those -- to those individuals than what the
7 average is across.

8 So for example we have a facility in Paulsboro,
9 New Jersey which the cost of living is way higher than
10 Beaumont, Texas. And those individuals make -- make
11 substantially lower, they make 30 percent lower wage
12 rate for those same jobs than we do in Beaumont, Texas.

13 Q. We spent a little time on each of these issues.
14 As you said you -- no need to rehash the operator, at
15 least for now. But I recall you testifying, did you
16 not, that you started with the -- the awful BP
17 explosion, API comes out with API 755. The industry
18 adopts that, safety is a huge issue.

19 Bottom line, A operator you described as -- as a
20 safety fatigue and cost issue, correct?

21 A. Yes.

22 Q. And why do -- why did the Company want to
23 eliminate senior job bidding?

24 A. Senior job bidding, you know, for us it's a bit of
25 a -- of kind of an antiquated approach to filling

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1 roles. If you think about it today, when we hire an
2 operator today, we hire operators that are skilled.
3 Oftentimes the majority of our operators have college
4 education, college degrees. They go to process
5 technology school and earn process technology degrees
6 which is a two year degree.

7 And -- and so, you know, the job market has
8 changed over decades and decades and decades. People,
9 you know, have skills or earn skills or go to school
10 for skills to hire into those. The way that the
11 bidding works is you don't have to know anything about
12 the job or have any skills at all. You just need to be
13 the most senior person and then you're allowed to get
14 the job by contract.

15 So if you think about that it's pretty costly to
16 the Company when somebody bids into a role to then --
17 to then except that person, you put them in a role,
18 we're forced to train him. If they -- if they can't
19 qualify which happens often, they can't qualify for the
20 role because they go through the training and they just
21 don't learn the material or can't -- can't do it, we
22 have to put them back contractually to the last job
23 that they were on. Which at that point you've already
24 filled that role, so now you have extra board or you've
25 got to move that person as well.

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1 So we've had several examples where somebody in
2 process, an operator who had ten years plus experience,
3 bids into mechanical but doesn't know anything about
4 mechanical at all. We have to put that person and
5 train them for a couple of years to do the job. We
6 then have somebody from the blending and packaging
7 plant who's untrained, not qualified, doesn't have
8 their certifications, that I mentioned like process
9 technology, they bid to -- into the job as an operator.
10 That individual that I'm specifically referring to, in
11 this particular case, a couple of them, didn't qualify.

12 We have to send them back to the blending and
13 packaging plant where we already hired people to fill
14 those roles and so now they have extra workforce and
15 we're paying extra until -- until somebody else
16 retires, because now we have extra people. You add
17 that up and it's pretty costly to the -- to the company
18 and very inefficient.

19 Q. If you recall, Phil, based on your management
20 roles back at corporate, did Baytown or Baton Rouge
21 have A operators?

22 A. They did not.

23 Q. Did they have senior bidding?

24 A. No.

25 Q. Did they have B&P plants under their steel worker

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1 contracts?

2 A. No.

3 Q. You mentioned your -- the team's discussions with
4 management. At some point did -- did the team discuss
5 actual proposals with management?

6 A. Yes.

7 Q. Is that standard process?

8 A. Yes.

9 Q. Can you explain that process in more detail for
10 us?

11 A. Yeah. I mean our senior managers they ask us to -
12 - to basically go through as many potential scenarios
13 and -- and, you know, discussion around different types
14 of things we would want to bargain in. And so
15 somewhere starting around August we -- we really had
16 our -- our first, I would say significant meeting where
17 we -- where we presented a bunch of scenarios. They
18 asked us a bunch of questions and we go back and -- and
19 kind of work that back and forth. I mean ultimately
20 they're -- they're looking at the members of the team.
21 And we're the -- the subject matter experts in
22 operations or in -- or in HR, or in labor.

23 And so they're looking for us. They don't know
24 the material to the extent that we do, so they're
25 asking questions. We go through and -- and put

1 together various, you know, scenarios and explain to
2 them and then tell them, you know, what we want to do.
3 They look for us to make that decision and then -- then
4 they endorse.

5 Q. And how much -- just because you've been at the
6 management level and at the plant level, I mean how --
7 how much back and forth, push and pull, if at all, is
8 there, you know, during that process? That is the
9 Beaumont bargaining team with corporate management?

10 A. A lot. I mean, it's, you know, it's their job to
11 push us to -- to every end that they possibly can so
12 that they can understand, you know, that that we've
13 done our due diligence to consider, you know, all
14 different scenarios and options.

15 Q. And we'll get there, but does that -- does that
16 ExxonMobil approach, does that continue through
17 bargaining as well?

18 A. Yes.

19 Q. What is an RFA?

20 A. RFA is a term we use, its Request For
21 Authorization. It's kind of the end process for us.
22 Where -- where the regional director kind of sets the
23 boundary condition of which we can -- we can bargain
24 with them.

25 Q. Is that part of the process that you -- that you

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1 just described?

2 A. Yes.

3 Q. The back and forth with corporate management?

4 A. Yeah. So we -- we would go back and forth through
5 -- through those discussions going through different
6 scenarios and then at the end we would say this is --
7 this is what we want, this is where we're going to
8 bargain, this is the -- this is what we want you to
9 consider, and then they would give us the endorsement
10 and that would be the RFA which would essentially be
11 right before bargaining begins.

12 Q. So back in Beaumont in 2020, was that -- did that
13 process last throughout 2020 or some other point?

14 A. Yes. We got the RFA in late December.

15 Q. You mentioned an August 2020 date. Is -- I
16 believe -- is that when you first discussed specific
17 proposals with management, I believe that's what you
18 said?

19 A. Yes.

20 Q. Okay. Was that -- where you submitting a formal
21 request for authority at that point for them to review?
22 Was it more informal, tell us -- tell us more about
23 those discussions?

24 A. No. It would be formal. I mean, the formal
25 process would have been at the -- at the end of

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1 December when we go for RFA. This is more informal.

2 It's, like I said it's a lot of back and forth, it's a
3 lot of questions. We're -- we're presenting to them a
4 bunch of different scenarios. I would say, you know,
5 it's -- it's more question answer session and
6 discussion than anything else.

7 Q. And what if any were the -- were the the core
8 proposals that you presented to discuss with management
9 in August 2020?

10 A. I would say we discussed the A operator, bidding,
11 the wage progression. We discussed maintaining off
12 pattern, maintaining the 75 day strike notice. We also
13 discussed wages, wage differentiation between the
14 refinery and B&P and then just, you know, overall, wage
15 increases.

16 Q. How about bidding?

17 A. We discussed job bidding.

18 Q. You might have said that.

19 A. Yeah.

20 Q. So you -- we're four or five months into the heart
21 of COVID.

22 A. Yes.

23 Q. At that time in August?

24 A. Yes.

25 Q. Company's not doing well at all?

1 A. No.

2 Q. I think you said bleeding money?

3 A. Yes.

4 Q. By the way, just briefly, do you know how much the
5 Company lost in 2020, ballpark?

6 A. I think we lost -- it was over 20 billion and I
7 think we had borrowed -- we were in debt probably over
8 80 billion?

9 Q. Both records?

10 A. Yes.

11 Q. Yet you're going to management at that point
12 talking wage increases?

13 A. Yes.

14 Q. And how did management respond to that?

15 A. Very unfavorably. I mean, Mr. Cope's reaction
16 when we brought it up, I mean he said raises, almost
17 like astounded that we were even -- that we were even
18 mentioning that we were going to issue any -- any
19 raises or increases for -- for anyone. I mean, this is
20 on the heels of us laying off 15,000 people. This is
21 on the heels of us cutting salaries amongst a lot of
22 workforce. This is on the heels of us carrying out the
23 401K for the workforce and as well as freezing salaries
24 for -- for all of the rest of the workforce globally.

25 Q. How did you and the team respond to -- to Mr.

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1 Cope's opposition at that point to wage increases?

2 A. I mean, in the kind of the back and forth what we
3 told him was for sure if we went forward with -- with
4 no raises, I mean, it was almost a guarantee we'd have
5 a strike. We'd have a work stoppage. We didn't, you
6 know, think that there would be, you know, any -- any
7 possibility to not -- to not avoid a strike.

8 Q. So after this, I believe you testified earlier,
9 but after this August 2020 meeting, continued
10 bargaining team discussions?

11 A. Yes.

12 Q. At an accelerated pace?

13 A. Yes.

14 Q. Continue meetings with management?

15 A. Yes.

16 Q. At some point did you go back to management with a
17 true request for authority?

18 A. We did.

19 Q. When was that?

20 A. It was late December.

21 Q. Did you go back with the same core objectives or
22 did those change?

23 A. No, we went back with the same objectives. The A
24 operator, the bidding, the wage progression, the
25 differentiated wages and then, like I said, maintaining

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1 off pattern and the strike notice was also important.

2 Q. Any other economic incentives for employees beyond
3 the wage increases?

4 A. We did have in there bonuses, sign in bonus as
5 well.

6 Q. Had COVID got any better by that time?

7 A. No, not really.

8 Q. So we're still in the pits of COVID, management
9 had expressed opposition to the wage increases, citing
10 all the other problems the Company was having and our
11 employees.

12 You go back again with wage increases and
13 additional economic incentives on top of that, why?

14 A. I mean, we had the -- these core objectives that
15 we wanted to get out -- get out of the contract. And
16 we did feel it was -- it was important to well, put
17 something in front of the workforce that we felt would
18 -- would have been favorable. We wanted the workforce
19 to -- to, you know, if having -- having something where
20 they would see in, you know, wage increases and
21 incentive to continue to sign and get a contract to
22 move forward.

23 So you know, our discussion with -- with Steve was
24 that -- was that, you know, we want to try to avoid a
25 work stoppage and a strike at all costs. So we felt,

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1 you know, that it was important to have money on the
2 table.

3 Q. Did management ultimately approve the proposals
4 and objectives the team laid out?

5 A. Yeah. They gave us an endorsement. Like I said,
6 it's -- it's, you know, boundary conditions. So I
7 mean, they said, you can negotiate within this round.
8 So in each one of those there's always, you know, room
9 for movement for us on each one of those items I
10 mentioned. But -- but, you know, Steve's comment was,
11 okay. We can -- we can do the wage increases but you
12 guys -- you guys have to -- have to go and get those
13 core objectives.

14 Q. Was your understanding that they were -- I mean,
15 you mentioned there was still flexibility within the
16 core -- each core objective.

17 But would you -- did you interpret that as they
18 became must haves?

19 A. Absolutely.

20 Q. Is Mr. Cope still with the Company?

21 A. No, he retired in January of '21.

22 Q. And who -- who replaced Mr. Cope?

23 A. Brian Ablett.

24 Q. Was Mr. Ablett part of any of those RFA
25 discussions?

1 A. Yeah. He started to come on board in December and
2 so he became part of our December discussions, part of
3 the RFA. And then ultimately part of the discussions in
4 January and then took over in January.

5 Q. I don't want to beat a dead horse, Phil. But what
6 -- what ultimately became -- what were the must haves
7 that Mr. Cope and Mr. Ablett approved in exchange for
8 authorizing the wage increases?

9 A. Maintaining off pattern, maintaining the strike
10 provision, the 75 day strike notice, we're definitely
11 there. And then the A operator, the bidding, the wage
12 progression and then the differentiation of wages
13 between the blending in package plant and the refinery.

14 JUDGE WEDEKIND: Can I just interrupt for a
15 second. I was a little confused about all this
16 discussion of wage increases.

17 Were either of those last two you mentioned wage
18 increases or is that something else?

19 THE WITNESS: Yeah. So the wage increases were
20 approved, just a differentiation between the blending
21 and packaging plant positions and the positions at the
22 refinery itself.

23 JUDGE WEDEKIND: So where did the increases occur
24 Between the blending and the --

25 THE WITNESS: Yeah, so both.

1 JUDGE WEDEKIND: Okay.

2 THE WITNESS: The -- there was -- we gave wage
3 increases for the refinery workers which are operators,
4 lab technicians, safety professionals and maintenance
5 people.

6 JUDGE WEDEKIND: Okay.

7 THE WITNESS: Which is essentially up to pattern.
8 Pattern bargaining wages.

9 JUDGE WEDEKIND: Okay.

10 THE WITNESS: And then for the blending and
11 packaging plant we established wages over that six year
12 period, increases. The first couple years were zero,
13 but then the last three years have a percentage
14 increase over all three years of the contract.

15 JUDGE WEDEKIND: Okay. So even though some of
16 these were 30 percent higher than New Jersey.

17 THE WITNESS: Yes.

18 JUDGE WEDEKIND: You still increase them.

19 THE WITNESS: Yes.

20 JUDGE WEDEKIND: Is that what you're saying?

21 THE WITNESS: Yes.

22 JUDGE WEDEKIND: Okay. That's what I wanted to
23 get clear. Okay. Thank you.

24 Q. BY MR. STANLEY: Just to clarify -- just to
25 clarify.

1 MR. STANLEY: And thank you Your Honor.

2 JUDGE WEDEKIND: Yes.

3 MR. STANLEY: My next question will summarize the
4 wage authority. So that will --

5 JUDGE WEDEKIND: Okay. All right.

6 MR. STANLEY: -- you beat me to it.

7 Q. BY MR. STANLEY: But the -- you were describing
8 earlier the reasons for, from a wage perspective,
9 separating the B&P, the blending and packaging plant
10 from the refinery. Talking about what employees --
11 other B&P employees at other Company sites are paid.
12 And I believe you might have even said competitors?

13 A. Yes.

14 Q. All right. I think you just answered the Judge's
15 question that you were offering increases to the B&P --
16 B&P employees.

17 Can you -- can you go back and explain, at that
18 time what the authority was just for the B&P employees?

19 A. Yeah. The authority was -- was up to 1 percent
20 per year for the B&P employees. That was the -- that
21 was and the RFA.

22 Q. Okay. And then if -- I believe you then talked
23 about a six year option on wages and did that -- did
24 that include increases for the B&P employees in years
25 four, five, and six?

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1 A. Yes.

2 Q. And Phil, again, we'll have another witness talk
3 more about pattern, more detailed labor relation
4 issues. But you did describe pattern briefly earlier,
5 but focus more on the pattern agreement expiration date
6 which we negotiated hard to get away from.

7 But when you say patterned wages, what do you
8 mean?

9 A. So for us when -- when the Company negotiates with
10 the USW, and I say the Company it's usually one of the
11 sites, one of the Companies. This last one happened to
12 be Marathon, the prior one was Shell, but one of the
13 Companies takes the lead in the negotiation with --
14 with the USW. And what they negotiate is essentially
15 wages over the -- over the contract and -- and some
16 other terms that are -- and the term that's in there,
17 could be three years, this last time it was four years.

18 So for us we -- we typically accept the patterned
19 wages or we negotiate around those pattern wages. So a
20 lot of times we call it me too, just meaning that we
21 accept or we build off of what those pattern wages are.

22 Q. Okay. So despite the economic conditions and our
23 competitors being in the middle of a contract, we were
24 still -- we still had authority at that point to offer
25 patterned wages?

1 A. That's correct.

2 Q. For the refinery?

3 A. Yes.

4 Q. Phil, I don't recall if you touched on this aspect
5 of the blending and packaging issue, but again you did
6 go into good detail on how the -- the Beaumont B&P
7 employees were paid 30, 40 percent higher in some
8 classifications in our own sites.

9 What if anything was the trend on B&P plants with
10 our competitors?

11 A. Yeah, I didn't touch on that. But so blending and
12 packaging plants, a lot of our capacitors have moved
13 that to overseas, China, Vietnam. There's -- there's
14 most of that work is -- is being done there. You know,
15 they shipped the lubricant there and then they have an
16 assembly line where they can bottle, package, you know,
17 and then ship it to -- to anywhere in the globe.

18 Our objective was to continue to keep Beaumont as
19 competitive as possible, because we're not trying to do
20 that. But, you know, the market has really been moving
21 in that direction.

22 Q. But you wanted to keep the work in Beaumont?

23 A. Yes.

24 Q. And these competitors are they trying to eat into
25 our Mobil One market, is that -- is that what's going

1 on?

2 A. Absolutely.

3 Q. You testified earlier I believe, Phil, that you
4 had -- you had explained to management back in 2020, I
5 think starting in August, that -- that essentially
6 saying there would be a work stoppage or a high
7 likelihood at least, I don't want to put words in your
8 mouth, if we didn't offer wage increases.

9 Is that -- was that your testimony?

10 A. Yeah. That we felt it was almost guaranteed.

11 Q. We're, again into December. You've got the RFA.
12 Did you discuss with management in any of those -- in
13 any of those meetings or discussions what you thought
14 the likelihood of work stoppage was with the wage
15 increases?

16 A. I mean, we felt they still -- honestly if we
17 thought that putting it forward with the wage increases
18 was going to give us our best opportunity, to get a
19 ratified contract. So I would say there was some
20 discussion around that but -- but given the wage
21 increases, especially in the times that were going on,
22 we felt putting that in front of the workforce was --
23 was a fair contract and that there was, you know, a
24 high likelihood of given an opportunity to vote that
25 they would ratify it.

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1 Q. Did you talk about what you -- what you
2 anticipated or, you know, what -- what you predict if
3 the employees were not able to vote on the offer?

4 A. Yeah. I mean, what we said was at that point we
5 were pretty much thinking it was going to lead to a
6 work stoppage. That alternately that the Union would
7 strike or for us to get the must haves that -- that we
8 would have to practically locked them out.

9 Q. And just so we're clear. This -- you're saying
10 this is something you actually discussed within the
11 team and with management?

12 A. Yes.

13 JUDGE WEDEKIND: What -- his answer included more
14 than one thing.

15 What did you actually discuss with management?

16 THE WITNESS: We discussed the possibility and the
17 potential of a strike. We discussed locking them out
18 if -- if there was no opportunity to vote on -- on a
19 contract and for us to get the must haves that we would
20 likely have to lock them out if they didn't strike.

21 Q. BY MR. STANLEY: Why did you think a work stoppage
22 truly could happen leading into 2021? What was the
23 thought process there?

24 A. Essentially everything that we had put on the
25 table at one point in time had been on the table in

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1 prior years and negotiations. And so what we were
2 going after we knew was important to the Company, but
3 it was also important to the Union. I mean, we -- we
4 knew it was important for them as well.

5 So I mean, at no time did we think that this was
6 not going to be, you know, a tough bargaining session
7 and -- and was going to -- was going to be a difficult
8 contract to negotiate and bargain. So for that matter
9 I would say that -- that we had made sure that we had
10 expressed to management that -- that there would be a
11 likelihood that it could take a work stoppage to -- to
12 actually achieve the must haves.

13 Q. And how if at all did the experience from 2015
14 factor into that analysis?

15 A. It factored in a lot. I mean, we -- as I
16 mentioned before we learned a lot about ourselves in
17 2015. What we learned explicitly was that we did not
18 want our organization to sit there in 24 hour rolling
19 extensions just waiting for the Union to strike and
20 have our managers, are engineers, and our supervisors
21 essentially fatigued to the point to where -- to where
22 they may not be able to be in kind of that right frame
23 of mind to run the facility.

24 So we wanted a fresh workforce, so what we had,
25 you know, decided was is that if it got down to that

1 point that -- that we would do, you know, we would
2 initiate the work stoppage ourselves and lock out
3 versus sit there and -- and wait for months on end for
4 our organization just waiting for the Union to strike
5 at any time.

6 Q. Or spending \$30 million as you testified earlier?

7 A. Yes.

8 Q. And again, we talked about a number of years.

9 You're referring back to the 2015 negotiations,
10 correct?

11 A. That's correct.

12 Q. How did Mr. Cope react to these discussions about
13 the potential for work stoppages?

14 A. I mean, as the operations manager he looked
15 directly at me and said are you prepared to run the
16 site? And with full confidence I said yes. I mean, we
17 had, as mentioned earlier, we had done a lot of work to
18 improved the operations. As an example, when I got
19 there in 2017 I felt that the -- that our supervision
20 in the field wasn't as strong as it needed to be. So I
21 had hired 20 retirees, so we called them annuitants,
22 but 20 supervisors that had recently retired from Baton
23 Rouge, from Baytown, and from Beaumont. These were all
24 highly ranked individuals. These are people in our
25 ranking and performance system that would have been top

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1 third type of performers.

2 So I hired -- hired all these individuals and for
3 one year, for 12 months they used 20 individuals they
4 came in every day and trained my first lines. They
5 trained them how to be better leaders, they trained
6 them how to be better supervisors, they trained them
7 how to be subject matter experts in their field of
8 operations, so we put a lot of time and effort as we
9 were improving the facility to really grow the
10 competency, the skills, the knowledge, the leadership
11 capabilities of our leaders. So we felt really good
12 that we had a strong workforce that could seamlessly
13 take over and run the facility.

14 Q. If necessary?

15 A. Yes.

16 Q. Did you want a work stoppage?

17 A. No.

18 Q. Did Mr. Cope want a work stoppage?

19 A. Definitely not.

20 Q. Let's move into actual bargaining in 2021. Just
21 again, we'll get witnesses to go into more detail, but
22 did you attend every bargaining session in 2021?

23 A. Yes.

24 Q. How about sidebars?

25 A. Almost all of them. There were a few where it was

1 just one-on-one with Blake and one of the Union leaders
2 but almost all of them.

3 Q. How did bargaining go in January and February?

4 A. Not very good.

5 Q. Any material progress?

6 A. No.

7 Q. Material progress on any of them must haves?

8 A. No.

9 Q. Did the Union give any indication in those first
10 couple of months that they were open to any of the must
11 haves?

12 A. No, not at all. As a matter of fact it was quite
13 the opposite. There were things that they were putting
14 in their offers that basically we're showing us how far
15 apart we were. I mean, there was items in there where
16 they wanted to take back a position that we had a work
17 stoppage, a strike over in the 80s where we had
18 converted an operator position to a supervisor role at
19 the console. And that that was in there -- in their
20 offers. So we were pretty -- pretty far apart.

21 Q. Aside from the proposals in your -- in the
22 meetings and sidebars, had they sent any signals or
23 giving you any verbal indications they were open to
24 these must haves?

25 A. No.

1 Q. So we get into February, February 15th, the Union
2 issued its 75 day strike notice, correct?

3 A. Correct.

4 Q. How many times had the Company received a strike
5 notice from the Union before that, if you know?

6 A. Just once or twice.

7 Q. In all of ExxonMobil?

8 A. Yes.

9 Q. And one of those was in 2015?

10 A. Correct.

11 Q. From the Beaumont USW?

12 A. Yes.

13 Q. And we respond with a lockout notice, correct?

14 A. Yes.

15 Q. The same day?

16 A. Yes.

17 Q. So either party -- there could be a strike or a
18 lockout come May 1st, right?

19 A. Correct.

20 Q. At that time, Phil, on February 15th, maybe
21 immediately following, did you believe the Union would
22 actually strike?

23 A. I did.

24 Q. Why do you say that?

25 A. Just in sidebars, you know, there was discussions

1 about that. I would say, you know, as -- as kind of,
2 you know, time was going on there was billboards that
3 they had put out, there was signs that they had put
4 out. They were -- they were making, you know, strike
5 signs and things like that.

6 We had, you know, a bargaining session at the --
7 at their USW office. There was a room that all of the
8 signs were in there. The door was open so we had to
9 walk by, you could see it. So it was just a lot of
10 movement and discussion and things that were showing
11 that they were serious, that they were going to strike.

12 Q. As May 1st got closer, I'm assuming?

13 A. Yes.

14 *[Long pause]*

15 Q. Phil, you detailed EMCO, the Company's continuous
16 operations plan and program earlier. But let's focus
17 on Beaumont EMCO leading up to 2021 bargaining.

18 When -- when did the company -- when did the
19 overall EMCO planning start for 2021 bargaining?

20 A. We started the planning in -- in early, you know,
21 2020.

22 Q. At the plant?

23 A. At the plant.

24 Q. Okay.

25 A. Yeah. And really just started, you know, getting

1 the groups together and planning out all of the -- the
2 activities and things that have to happen. Because we
3 still have, you know, deliveries and materials and
4 goods and services and things. So there's a lot of
5 people you have to contact and make sure that they're
6 aware that this could be going on.

7 Q. Now, is that a typical starting point in
8 ExxonMobil negotiations?

9 A. Yes.

10 Q. And when did the on the ground, the extensive
11 training that you described earlier, when did that
12 start for -- for Beaumont 2021 bargaining?

13 A. It normally takes us around 120 days to -- to, you
14 know, get our engineers and supervisors to kind of go
15 through all those training steps. So we started in
16 December, early December for them. At that point it
17 was really just classroom training. They were
18 watching, you know, videos or going through reading
19 material and taking what we call computer based
20 training modules where they have to take a test and you
21 have to score 100 percent.

22 So they were going through those -- those type --
23 that type of training. We really didn't start in
24 earnest until we got a strike notice. When we get that
25 strike notice, I mean, that's kind of go time. I mean,

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1 that's when -- you know, up until that point we were
2 just doing classroom training. But once you get that
3 we have to then, you know, prepare for that work
4 stoppage. So at that point everything was kicked into
5 high gear.

6 We, you know, we have to start spending a lot of
7 money. Where we have to basically build a city inside
8 the plant. We have to have laundering facilities, food
9 facilities. We have to be able to service three meals,
10 you know, for day shifts and three meals for night
11 shift. We have to, you know, bring in extra security
12 and security guard contractors.

13 So there's a lot of people that we have to hire
14 into the plant to basically build this facility. We
15 have to have places to store dry goods, places to
16 store, you know, wet -- all of our cold -- cold goods.
17 We, you know, freezers and stuff. We have laundering -
18 - like I said, laundry facilities. Places for people
19 to -- all these people to take showers. So we start
20 building out these -- these sleeping quarters and all
21 of these places for people to do this after we get that
22 -- that strike notice.

23 And then our workforce is now training, they're
24 out in the field in earnest. They're qualifying on the
25 units, we're doing all of these review boards. So it

1 gets kicked into high gear and, you know, at that point
2 I would say we're starting to spend a lot of money.

3 Q. Why did -- why did the company respond to the
4 Union strike notice with a lockout notice?

5 A. For a couple of reasons. One -- one, we want to
6 be, we need to be in control of -- of this. As I
7 mentioned before in 2015, we learned that we were -- we
8 were not going to sit here for weeks and months again
9 and fatigue our organization. So if it got down to the
10 point where we weren't making any progress we -- we
11 wanted to -- to be in a position to lock out and to
12 have that orderly transition between us and the unit.

13 We also knew that -- that we needed to -- to have
14 -- to, you know, to get these must haves and that --
15 that a lockout might be necessary for us to to -- to
16 get these must haves.

17 Q. Would the Company have provided lockout notice on
18 February 15th if the Union had not given a strike
19 notice?

20 A. No.

21 *[Long pause]*

22 JUDGE WEDEKIND: How do you know that?

23 THE WITNESS: We had discussed it.

24 JUDGE WEDEKIND: Who's we?

25 THE WITNESS: Myself and the bargaining -- the

1 team that I had mentioned before.

2 Q. BY MR. STANLEY: Leading up to February 15th, was
3 -- was there any plan to issue a strike notice on or
4 around that date?

5 Excuse me, any plan for the company to issue a
6 lockout notice on or around that date?

7 A. No.

8 Q. I want to -- you've provided a lot of -- a lot of
9 information on the EMCO plan and EMCO training. And
10 but I don't recall if you touched on what you really
11 refer to kind of the final stage in job shadowing.

12 Can you tell us a bit -- if you did, can you tell
13 us please about bit more about that final stage as --
14 as a potential strike or lockout date approaches?

15 A. Yeah. I didn't talk about that probably really
16 too much. So at the final stages of -- so let's just
17 use May 1st, at the final stages of that when we get to
18 that stage of -- of EMCO, you know, nominally and four
19 or five days before that, we have to put our
20 organization into what we call EMCO mode.

21 So we -- we take all of our engineers, all of our
22 supervisors, and managers and we take those
23 individuals, we put them out to the units and we begin
24 something called shadowing. And we have to -- we have
25 to have our workforce, the non-rep shadow the rep to

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1 make sure that they understand, you know, what's going
2 on in the unit. How's the unit operating, you know.
3 The plant is very dynamic so you don't come in every
4 day and -- and it's not -- it's not like a bottling
5 factory where you're doing the exact same thing every
6 day. It's -- it's much more dynamic than that, so you
7 have to understand the pressures, the temperatures,
8 what sort of issues are going on, what equipment is out
9 of service, where are you running today versus where
10 you might be running tomorrow or yesterday. And -- and
11 so they have to be there for that, they have to be
12 watching that and they have to be there for all of
13 those different transitions and handover. So we start,
14 like I said about four or five days before shadowing so
15 that we're ready for a seamless handover.

16 Q. And how -- again, you spent a fair amount time
17 describing the training of the supervisors, engineers,
18 and managers, to put them in that position to be able
19 to operate immediately and seamlessly.

20 But did you -- I mean, tell us more, please about
21 their actual training. How much -- how many hours per
22 week? How much total hours? What all goes into that
23 putting them into that final position?

24 A. It's probably 20 hours a week for -- for a couple
25 months of just classroom training. I would say it's

1 anywhere between 150 and 200 hours total just -- just
2 in that. And then it's easily doubled that amount for
3 a field based training for some units, maybe even
4 triple. And -- and the individuals, I mean, the amount
5 -- the extensive training they go through, they have to
6 demonstrate. So there's -- there's physical field
7 demonstration where they have to go to the field and
8 actually do the activity and -- a supervisor is sitting
9 there watching them and questioning them and making
10 sure that they understand the safeguards and the
11 barriers that prevent, you know, something from
12 happening and they have to be able to repeat that.

13 And then when they come to -- to getting what we
14 call qualified, we look at, you know, they have to have
15 -- we look at all the records, we make sure that
16 they've done all of the training, we make sure that
17 they've taking all of the tests and scored, you know,
18 the appropriate scores.

19 And then we -- we take them through a review board
20 where we sit there and grill them. I mean, we have
21 what we call a shift superintendent position which is
22 kind of the highest ranking shift -- shift person. He
23 sits in these review boards with other first line
24 supervisors that we consider to be subject matter
25 experts in this -- in this field and they grow these

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1 individuals to make sure that they -- that they
2 understand.

3 I mean, they don't want to be working alongside
4 somebody who can't do the job and doesn't know what to
5 do in a, you know, potential emergency situation. So -
6 - so that process is pretty robust, and it's no
7 different than we would put any other worker that's
8 coming in. It's absolutely no different. They have to
9 pass and go through the exact same activities.

10 Q. And did you -- you said earlier that your training
11 about 350 --

12 A. Yes.

13 Q. -- supervisors, engineers, and managers?

14 A. Yes.

15 Q. And it's 1,400 total employees typically operating
16 full capacity?

17 A. Yes.

18 Q. Did all that three -- did all that -- excuse me.
19 Did all those 350 supervisors, managers, engineers go
20 through the training you just described or just some
21 percentage of them?

22 A. No, all of them.

23 Q. We were talking about -- I asked you about the
24 strike and lockout notice and you referenced the
25 Company was prepared to lock out if necessary.

1 But you said something like did you not -- if
2 we're not closer to agreement or making progress. Do
3 you remember that testimony?

4 A. Yes.

5 Q. What -- did you -- did the bargaining team
6 internally and with management actually discussed
7 scenarios?

8 A. Yes.

9 Q. And what, if you recall, did you discuss -- did
10 you discuss any exceptions? So you're getting close to
11 May 1st, reasons you wouldn't lock out?

12 A. Yeah. What we talked about was that if we were
13 close to -- if we were having negotiations and we were
14 getting close to our most haves, meaning that the Union
15 had come off of their -- their stance on where they
16 were, we were talking about that and we thought, you
17 know, a deal was, you know, very, very close. That we
18 would -- we would get into that rolling 24s. But for
19 hours, days, not weeks and months.

20 But what we said was, is that we -- it would be by
21 exception and that we had the authority to do that, but
22 we would have to be close to the deal.

23 Q. In any of those discussions within the Beaumont
24 team, or with management as you're going through those
25 scenarios and when you lock out and when you won't, I

1 mean, did you ever discuss decertification?

2 A. No.

3 Q. Ever discuss trying to get rid of the Union?

4 A. No.

5 Q. So the parties are into March, into April, still

6 no agreement. You testified EMCOS full speed ahead and

7 a work stoppage could come as early as May 1st.

8 How would you describe the status of actual

9 bargaining March and through April?

10 A. No progress.

11 Q. Were you still bargaining?

12 A. Yes.

13 Q. And no progress?

14 A. No progress.

15 Q. Any progress on the must haves?

16 A. No.

17 Q. Did the bargaining team, and along with the

18 management team, continue to discuss potential lockout

19 scenarios as you get into April?

20 A. Yes.

21 Q. And what was -- we're into April, what was the

22 Company thinking was going to happen May 1st?

23 A. That if the Union didn't strike, we were going to

24 have to lock out.

25 Q. Was the Company clear about that to the Union, as

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1 you recall?

2 A. Yes. I think it was April 23rd, about a week
3 before May 1st we -- we had a meeting at the Union hall
4 and Blake presented the Union with a document and told
5 them, we didn't want to lockout but we have to lockout
6 to move forward. We notified them, you know, hopefully
7 -- we were hoping at that point in time that it gave us
8 a week, that maybe it would kickstart something with a
9 negotiation. That maybe they would come off of some of
10 the hard core stances that they were having on
11 positions like -- like the console supervisor that they
12 still had in their -- in their offer. That they were
13 trying to convert back to wage. That they would move
14 towards our must haves and -- and hopefully have --
15 have some discussion around that. But -- it didn't
16 trigger anything. We made no progress.

17 Q. Why did you -- you had provided the lockout notice
18 after the Union had given you the strike notice back in
19 February 15th.

20 Why did you give the Union this supplemental
21 lockout notice?

22 A. Yeah. I mean, like I said, I mean, we wanted to
23 kick -- kickstart -- first of all, we wanted to be as
24 upfront and open with them. We also wanted to make
25 sure that they recognized that we were going to

1 lockout. That we weren't going to have the 24 hour
2 rolling extensions like we had in 2015.

3 On top of that, that we wanted to, you know, move
4 forward. We knew it was going to take a work stoppage
5 at this point without not making any progress in
6 bargaining to -- to achieve our must haves.

7 Q. Who made the actual decision on whether to
8 lockout?

9 A. We -- we made the decision as a team. And -- and
10 of course, you know, management endorsed it.

11 Q. Do you recall when you had your -- your final
12 discussion with management about locking out?

13 A. It was probably mid-April, mid to late April. It
14 was before that meeting of the 23rd.

15 Q. Okay. So moving closer to May 1st obviously did
16 the -- did the Union offer anything? Did they explain
17 to try to avoid the lockout?

18 A. They -- they offered -- they kind of talked about
19 the rolling 24s of which we told them that we weren't
20 interested in that. And then they did offer a one year
21 extension. Of course, you know, we told them that that
22 was a nonstarter. I mean, the one year extension was
23 going to put us right on top of pattern bargaining
24 again.

25 Q. And if you recall, in that one year extension

1 proposal, were they giving you any of your must haves?

2 A. No.

3 Q. You mentioned 24 hour extensions or 24 hour rolls,
4 did the Union offer that in this round of bargaining?

5 A. I don't remember a formal offer. I think it might
6 have been a discussion in the sidebar.

7 Q. Okay. Would that have done anything for the
8 Company in your view?

9 A. No.

10 Q. Why not?

11 A. We weren't close to any sort of, you know, deal or
12 any close -- any closer of any of our must haves. And
13 on top of that we weren't going to get into a situation
14 where we had to fatigue our workforce to the point to
15 where they couldn't take over operations in a safe and
16 efficient manner.

17 Q. Had the Union withdrawn its strike notice?

18 A. No.

19 Q. Phil, because we're getting close to -- in our
20 testimony to May 1, I want to go back and focus more on
21 the job shadowing and the -- the importance -- the
22 necessity you testified of a seamless and immediate
23 transition.

24 Why in your view is that necessary at a refinery?

25 What -- let's start with that.

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1 A. Yeah. It's -- operating a plant, especially the
2 size of -- well any operating, any plant the size of
3 Beaumont and dealing with -- with hydrocarbons that are
4 flammable, it it's a potential dangerous environment.
5 And as I mentioned before I mean core to -- to us is a
6 process in personal safety. So I mean, we wanted to
7 make sure that -- that -- and we mentioned this
8 numerous times to the Union leadership team, that we
9 wanted to be in control of -- of that process.

10 We did not want our workforce to be fatigued. We
11 didn't want them -- we wanted to make sure that that
12 was as seamless as possible, and that -- that we could
13 -- we could take over and continue to run it the same
14 way that it was being run.

15 Q. Why for example can't the Company just shut down
16 the refinery in case the -- when a Union strikes or in
17 anticipation of that and then restart it when it has
18 people trained up? Why can't we do that?

19 A. For a couple of reasons. First of all we'd say
20 shutting down and starting up a refinery or any big
21 unit for that matter, is the most dangerous --
22 one of the most dangerous operations you get into.

23 You're going through a lot of transients and, you
24 know, there's -- there's a potential for a lot of
25 different things to happen. We wouldn't want to do

1 that in the middle of -- of a potential strike or
2 anything, you know, there's a lot of things that can
3 happen.

4 On top of just the danger of a transient operation
5 like that, we have commitments to a lot of people that,
6 you know, a lot of different businesses. We sell our
7 products and have -- and have contractual commitments
8 to people that -- that if we were to lockout, shut down
9 or strike and shut down, and now we don't have a plant
10 operating, there's -- there's a tremendous amount of
11 other impact to businesses that we buy and sell to,
12 that we have contractual obligations to, that would --
13 that would also be a problem.

14 Q. And you testified to shutting and starting being
15 dangerous in any context. But what were your -- what -
16 - what would happen or what could happen if there was a
17 strike in the middle of that shut down or start up?
18 How would that impact it?

19 A. I mean, it would be problematic from the
20 standpoint of -- of like I said, just -- just handing
21 over operations from one individual to another is
22 already a stressful, contentious environment, as well
23 as -- as, you know, ensuring that seamless transition
24 and making sure that that person is monitoring all the
25 right -- all the right parameters is -- is tough in the

1 base.

2 To -- to think about going from there whenever we
3 shut down and start up, the activities that an operator
4 has to do is -- is at the peak of -- of their -- of
5 their job basically. You know, they have -- they have
6 a tremendous amount of responsibility to -- to, you
7 know, ensure that that pumps are -- are started up and
8 shut down correctly, that vessels are -- are emptied
9 and to pressure the right way. And so those activities
10 take a lot of -- of skill, a lot of -- a lot of
11 knowledge, a lot of competency, a lot of time and --
12 and it's just not -- not the right environment to be
13 doing something like that.

14 Q. How long would a full -- full refinery, full
15 complex shut down and start up take?

16 A. Typically call it four or five days.

17 Q. And that's fully staffed?

18 A. Yes.

19 Q. Phil, I believe you testified earlier, this
20 corporate EMCO plan, to invest heavily, as you said 10s
21 of millions of dollars to be able to seamlessly operate
22 in the case of a work stoppage, I believe you testified
23 that's been in place for as long as you know, correct?

24 A. Yes.

25 *[Long pause]*

1 Q. So we lockout on May 1st. How was the transition
2 from an operational perspective?

3 A. It was -- it was smooth. It was seamless. I
4 would say the represented workforce did a good job of
5 ensuring that that the handover to the -- to the non
6 rep was -- was smooth. They -- you know, look,
7 everybody cares about the place, no matter which side
8 you're on. So, you know, they did a good job of
9 handing it over. Our guys did a good job of taking it
10 over and running it. And I don't think it could have
11 went any better.

12 Q. Moving forward from there, in fact, let's start
13 with just your overall performance. How did the -- how
14 did the refinery operate during the ten month lockout?

15 A. I mean, the refinery operated extremely well. It
16 -- each month I would say it just seemed to get better
17 and better. The supervisors continued to find ways to
18 optimize within the plant, you know, operating
19 envelopes. We broke utilization and rate records on
20 almost every unit in the plant, multiple times.

21 As a matter of fact we wound up having our highest
22 utilization year ever on record in 100 plus years we
23 operated the facility, and we broke the utilization
24 record for any plant in North America for as far back
25 as we could ever record the data, and that's including

1 all of the rest of the refineries that we own in North
2 America. We had higher utilization, not only for that
3 year but for any year that they've ever had.

4 Q. Did the Company boast about that at the bargaining
5 table?

6 A. No.

7 Q. Boast about that to the media?

8 A. No.

9 Q. Were there media reports on the Company's
10 performance?

11 A. Yeah, consistent reports that we were operating at
12 half rate, half capacity, 50 percent. We chose to stay
13 away from answering any of that. We chose to stay away
14 from gloating about our performance and we just let the
15 media publish whatever they wanted.

16 Q. Why did you take that approach?

17 A. We felt it wasn't right to, you know, to basically
18 shove it in the face of the workforce that was outside
19 on how we were running and what, you know, things we
20 were doing on the inside of the facility.

21 Q. When media was reporting we were operating at 50
22 percent utilization, what was the real number?

23 A. At -- at that time it was probably closer to 94,
24 95 percent.

25 Q. How is that compared to the historical context at

1 Beaumont?

2 A. I mean, Beaumont's historical best was probably
3 87. So I mean we were blowing it out of the water.

4 [Long pause]

5 Q. Did there come a time when the Company had to use
6 contractors during the lockout?

7 A. Yes.

8 Q. Why?

9 A. Shortly after the lockout we realized that --
10 that, you know, this could be -- this could be very
11 prolonged. We weren't making any progress. We were
12 very far apart as I mentioned. The Union wasn't coming
13 close to wanting to discuss any of our must haves.
14 They still had the -- the provisions in there to try to
15 take over a supervisor position and convert it back to
16 wage.

17 Just knowing all of that what we -- what we said
18 was is that if we're going to run for months and months
19 and months, and this is going to be extended, we need
20 to have a place in the future to where we can give our
21 workforce more time off and then start allowing some of
22 our engineers and supervisors back into their normal
23 jobs. So what we did was -- was a couple weeks after -
24 - after the lockout we decided to bring in a class of
25 contractors and start training them as operators.

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1 Knowing that they -- they couldn't work and this would
2 be months into -- into the future before we could
3 actually allow them to work as an operator, but -- but
4 just putting provisions in place so that we could have
5 some supplemental workers to work and not fatigue our
6 organization and allow some people to eventually get
7 back into some of their normal roles.

8 Q. Phil, much earlier in your testimony you -- you
9 discussed some of the business side -- not the business
10 side, but some of the logistics side of EMCO. And you
11 mentioned lodging and food and security.

12 Give us an idea of what -- we lockout, employees
13 are literally living at the site?

14 A. Yes.

15 Q. What was life like for one of our managers,
16 supervisors, engineers during that lock in period.
17 What are they doing, just in general?

18 A. Yeah. So for 12 hours they're -- they're working
19 on the unit and they're operating the unit. For the
20 other 12 hours they're -- they're eating and sleeping
21 at the facility. I would say in general -- I mean, you
22 know, people are not home so they're not able to sleep
23 in their bed. It wasn't, you know, fun. I mean,
24 people were sleeping in cots or -- or like, you know,
25 made-up bed shelters. You know, we had medical staff

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1 there to issue people's, you know, medications and
2 things that they have to take, that they normally take
3 every day at home and things like that.

4 So mean you have this little mini facility. You
5 have other people washing your clothes where you got to
6 go, you know, and pick them up get your clothes washed
7 and the food wasn't very good. I mean, so I mean it's
8 not -- it's definitely wasn't glamorous but the
9 workforce understood what needed to be done and --
10 quite honestly the workforce wanted to make sure that -
11 - that everything was just like it was when -- when --
12 when our workforce came back to work.

13 Q. And I want to just focus for a moment, you said
14 working 12 hours. Does that tie into your earlier
15 testimony that they were working two shifts instead of
16 the usual three shift operations?

17 A. Yeah. So normally we have, you know, four shift
18 teams and the four shift teams they work what's called
19 a DuPont schedule which is essentially like you can
20 just -- you can just Google DuPont schedule and they'll
21 pull it up. And it's essentially three, four, three,
22 four schedule with like at one point in that 28 days
23 that it repeats, there's a seven day break.

24 So you're never really working more than four days
25 and you always get some rest time in it. Our

1 workforce, when we set this up, we set it up as a -- as
2 a two shift schedule. Meaning that you're either on
3 days and nights and you stay on days and nights. And
4 you work an extended schedule, typically for us that
5 was like a 13 and two, meaning that you work 13 days
6 straight with two days off and then you come back and
7 repeat.

8 So over the course of a month when our normal
9 shift worker normally works 14 out of 28 days, our
10 workforce now was working more like 24 out of 28 days.
11 So there was much more work which was another reason we
12 were bringing in the contract workers, which is to
13 eventually get people more time off.

14 Q. Did you -- did you end the mandatory lock in at
15 some point?

16 A. Yeah, roughly about ten -- 10 to 12 days in.

17 Q. And then employees could come and go if they
18 wanted?

19 A. Yes.

20 Q. Did that change their work schedule up?

21 A. No.

22 Q. The same that you just described?

23 A. Correct.

24 *[Long pause]*

25 Q. How if at all, did bringing in contractors,

1 training them up, getting them ready, I know you said
2 it took a few months, but how if at all did that help
3 the managers, supervisors, engineers who had been
4 operating at such high utilization?

5 A. Initially when we brought them in I think it was a
6 bit of a shock just from the standpoint of well wow,
7 these guys think that this is going to go longer, we
8 were hoping it wasn't going to go very long. So I
9 think initially the supervision was like, they're
10 bringing us in, they must -- they must know something.

11 We didn't know anything, just suspected because
12 we're not making any progress at the table, that this
13 could go along. I think eventually as they started to
14 train the individuals they got -- they got pretty
15 excited. I mean, there's some -- there's some people
16 out there that were -- had good skills and knowledge
17 that we were getting from these contractors that we're
18 able to help them and then they saw that they were able
19 to get some time off. And -- and, you know, they
20 enjoyed definitely getting extra days off.

21 Q. If you recall, how many total contractors actually
22 perform work during the ten month lockout?

23 A. I think we got to about 150.

24 Q. Phil, you testified on the Company's excellent, in
25 some cases even record breaking performance. But was

1 there -- at any point during the lockout did the
2 Company feel financial or operational pressure to end
3 the lockout?

4 A. No.

5 Q. Phil, take a minute to review that document.

6 [Long pause]

7 Q. By the way, the highlight was just a printing
8 issue. We have no idea why it came out like that.

9 That was -- Phil, do you recognize this document?

10 A. Yes.

11 Q. What is it?

12 A. It's an e-mail that I sent to the -- you can see
13 at the top it's a group for operations so it's an e-
14 mail that I sent to the operations leaders.

15 Q. And that's January 2022, correct?

16 A. Yes.

17 Q. And as you recall, was that -- was that the date
18 of this actual e-mail?

19 A. Yes.

20 Q. A couple of months before the lockout ended,
21 correct?

22 A. Yes.

23 MR. STANLEY: Move to enter as Respondent --
24 Respondent 20?

25 MR. FLYNN: Can we take just a moment to read it,

1 Your Honor?

2 JUDGE WEDEKIND: Sure.

3 [Long pause]

4 JUDGE WEDEKIND: General Counsel, any objection?

5 MR. DOOLEY: Can I just ask a couple of quick
6 questions, Your Honor?

7 JUDGE WEDEKIND: Sure.

8 VOIR DIRE

9 Q. BY MR. DOOLEY: Mr. Matherne, who's Brian?

10 A. Brian Ablett, yeah, regional director.

11 Q. And then the e-mail address up there, who all does
12 that go to?

13 A. It's a -- it's a group that includes Brian and
14 Brian's staff and then managers at the other North
15 America sites.

16 Q. Okay.

17 MR. DOOLEY: I don't know if it's all that
18 relevant, Your Honor. I'll object on relevance.

19 JUDGE WEDEKIND: Any other objection from the
20 Union?

21 MR. FLYNN: I have a question too, Your Honor.

22 JUDGE WEDEKIND: Go ahead.

23 VOIR DIRE

24 Q. BY MR. FLYNN: What was up at the top that's been
25 taken off?

1 A. The black, it's just a -- like a 2022 logo with
2 like happy new year.

3 Q. It's --

4 A. Oh, I have no idea. I'm assuming that is just
5 printing like that.

6 MR. SPITZ: It's just the e-mail form, the
7 forwarded e-mail that we cleaned up, that's all. It's
8 not from the original, right?

9 MR. FLYNN: I would agree with Counsel for the
10 General Counsel, Your Honor.

11 JUDGE WEDEKIND: That it's not relevant?

12 MR. FLYNN: Part of it.

13 JUDGE WEDEKIND: That means what he's testified to
14 wasn't relevant either. Isn't it the same thing as his
15 testimony basically?

16 MR. FLYNN: Parts of it.

17 JUDGE WEDEKIND: Yeah, so. Was his testimony
18 irrelevant as well or -- there was no objection to his
19 testimony. I assume you're offering this as like
20 corroboration of his testimony or supplements?

21 MR. STANLEY: Yeah, for -- yeah, supplemental.

22 JUDGE WEDEKIND: I mean, supplemental in this
23 sense it's a later date, I guess.

24 MR. STANLEY: Correct.

25 JUDGE WEDEKIND: But he's talking about what

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1 period? The end of 2021 so he's talking about the year?

2 MR. STANLEY: Correct.

3 JUDGE WEDEKIND: Well, what is the actual, it's an
4 update for January 7th. Well, it seems to me it's
5 clearly relevant to the extent his testimony is
6 relevant which I think it is. Any other objection?

7 MR. DOOLEY: No, Your Honor.

8 JUDGE WEDEKIND: Okay. It's received.

9 **(Respondent Exhibit 20 is marked for identification.)**

10 MR. STANLEY: Thank you, Your Honor.

11 JUDGE WEDEKIND: Sure.

12 Q. BY MR. STANLEY: Phil, at some point, if you
13 recall, did the Union ask about this sort of
14 information at any of the meetings?

15 A. Towards the end there were a couple -- a couple of
16 questions.

17 Q. Okay.

18 A. And during meetings and maybe sidebar.

19 Q. And even early into the next year, couple of
20 months before the parties reach agreement, the lockout
21 ends, are we boasting about this to national media,
22 anything along those lines?

23 A. No. Nope.

24 Q. During the actual lockout, Phil, did the team just
25 continue to discuss circumstances under which it would

1 end the lockout?

2 A. Yes.

3 Q. What were those circumstances?

4 A. To -- when -- when we received a signed ratified
5 agreement that contained our must haves.

6 Q. Did that ever change?

7 A. No.

8 *[Long pause]*

9 Q. Did decertification factor in at all to the
10 Company's decision to lockout?

11 A. No.

12 Q. How about -- how about to continue the lockout?

13 A. No.

14 Q. Phil, as the number two executive at Beaumont, how
15 did you feel personally about the lockout?

16 A. I mean, I would say it affected me. I mean, I
17 have a lot of a personal connection with -- with, you
18 know, Unions in general and the USW. My grandfather
19 was a welder for the Union for 35 plus years working at
20 a refinery. My father was a machinist for the Union
21 for half his career. I mean, he actually was on a
22 Union committee in the 80s for Shell and sat across the
23 table from a company negotiating contracts when Shell
24 went on strike.

25 The Union was fighting for benefits. They were

1 fighting for medical, they were fighting for dental,
2 that we didn't have at the time. I can remember that
3 strike vividly. We ate baloney sandwiches for
4 breakfast, lunch and dinner for months. My son is in
5 the USW today. So I have a long history of United
6 Steel Workers, and PACE, and OCW and everything else in
7 my family.

8 So I mean, the decision to lockout didn't come
9 lightly. It was a decision that I knew we needed to
10 make as a company, but -- but sure, it affected me just
11 like it affected, you know, our workforce.

12 Q. Lockout ended March 2022? Why did the lockout
13 end?

14 A. Because we received a signed ratified agreement
15 that contained are must haves.

16 Q. That included aligning the B&P wages more with
17 market? More toward market I should say?

18 A. Yes.

19 MR. STANLEY: May we have a couple of minutes,
20 Your Honor?

21 JUDGE WEDEKIND: Sure, off the record.

22 *[Off the record]*

23 JUDGE WEDEKIND: Further questions?

24 MR. STANLEY: No further questions, thank you.

25 Thank you, Phil.

1 JUDGE WEDEKIND: Cross?

2 MR. DOOLEY: Yes, Your Honor. Just one second.
3 I'm just handing out one exhibit here that I've been
4 tending to put in.

5 CROSS-EXAMINATION

6 Q. BY MR. DOOLEY: Mr. Matherne, my name is Brian
7 Dooley. I'm an attorney for the government. I don't
8 think we've ever spoken before. I'm just going to be
9 asking you some questions about your previous
10 testimony.

11 So Mr. Matherne, if I understood your testimony
12 correctly, it sounds like in your view, heading into
13 negotiations, a work stoppage was inevitable?

14 A. I thought if -- if given the chance to vote on the
15 offer, that there was a likelihood that the employees
16 would -- would vote to ratify. But without that I
17 thought a work stoppage was inevitable.

18 Q. And it sounds like you were almost excited about
19 the prospect of getting in there and taking things
20 over?

21 A. No, definitely not.

22 Q. There's some discussion of a rolling 24s and you
23 testified that that wasn't something that was
24 acceptable to the Company; is that correct?

25 A. We would have gone there if we were close to a

1 deal. But to stay operating in that mode was not
2 acceptable.

3 Q. And you testified that the April 20, 2021 offer
4 for a one year extension was not acceptable because
5 that would have basically put Beaumont on pattern; is
6 that right?

7 A. Yes.

8 Q. But the Company never counter with an offer for a
9 shorter extension, maybe two or three months to give
10 you guys some additional time?

11 A. No.

12 Q. And you understand that the Union's proposal on
13 April 20, 2021 was primarily intended to avoid a work
14 stoppage?

15 A. We had an offer on the table at any point in time
16 that the Union could have excepted or came back and
17 countered. They -- of which they didn't.

18 Q. Mr. Matherne, when did you first become aware of
19 an effort to decertify the Union?

20 A. I don't remember the specific period. I don't
21 remember the specific month.

22 Q. Did you know about it prior to the lockout notice
23 being issued?

24 A. I believe so.

25 Q. The lockout was intended to cause employees pain;

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1 is that right?

2 A. No, it was intended to -- to get the employees to
3 accept the offer which -- which contained our must
4 have.

5 Q. By inflicting pain upon them?

6 A. I don't know that I would go as far as to say
7 pain. The intent was to -- was to, you know, get the
8 Union to negotiate and come -- come closer to where the
9 Company was.

10 Q. And the Company was -- I'll just say you, you were
11 conscious that the longer -- as the lockout drove on
12 for a certain amounts of times, employees would lose
13 access to certain benefits; is that correct?

14 A. Correct.

15 Q. And the Company wanted employees to decertify the
16 Union; is that right?

17 A. No.

18 Q. The Company didn't want employees to decertify the
19 Union?

20 A. We let the Company -- we let the employees decide,
21 so.

22 Q. So the Company did not try to encourage the
23 employees in any way to decertify the Union?

24 A. Encourage, no. Provide information so that they
25 understood their -- their choice, yes.

1 Q. I'm going to have you to look at what's marked as
2 General Counsel Exhibit 5.

3 **(General Counsel Exhibit 5 is marked for**
4 **identification.)**

5 Q. These are documents that were provided in response
6 to this e-mail.

7 Have you seen these documents before?

8 *[Long pause]*

9 A. Yes, I believe so.

10 Q. Are you still going to testify that the company
11 did not want employees to decertify the Union?

12 A. During the lockout the -- the employees were not
13 around for us to have any kind of communication or
14 conversation with. Our supervisors and our HR
15 department was getting numerous phone calls daily from
16 employees trying to gather information. Our HR
17 department routinely tried to submit information back
18 out to ensure that they were getting correct
19 information and information that would inform them so
20 that they can make an informed decision, which is their
21 choice.

22 Q. So is it your testimony that General Counsel's
23 Exhibit 5 is only provided to provide factual
24 information, not to attempt to influence employees in
25 any way or persuade them not to vote for the Union?

1 A. That's -- that's my feeling, yes.

2 MR. DOOLEY: Your Honor, I would offer General
3 Counsel's Exhibit 5.

4 MR. FLYNN: No objection.

5 JUDGE WEDEKIND: Any objection?

6 MR. STANLEY: No objection.

7 Q. BY MR. DOOLEY: Mr. Matherne, are you also --

8 JUDGE WEDEKIND: It's admitted.

9 **(General Counsel Exhibit 5 received into evidence.)**

10 MR. DOOLEY: Oh, sorry about that, Judge.

11 Q. BY MR. DOOLEY: Mr. Matherne, are you also aware
12 that at various points during the lockout the Company
13 commuted -- communicated to employees that the lockout
14 could end if they would decertify the Union?

15 A. That is a true statement.

16 MR. DOOLEY: I have nothing further at this time,
17 Your Honor.

18 JUDGE WEDEKIND: Any questions from the Union?

19 MR. FLYNN: Yes, Your Honor.

20 CROSS-EXAMINATION

21 Q. BY MR. FLYNN: You testified, Mr. Matherne, and by
22 the way my name is Patrick Flynn, I'm outside counsel
23 for you USW.

24 A. Okay.

25 Q. I don't think we've met before either.

- 1 A. No.
- 2 Q. You testified that you kind of keep up with the
- 3 industry and the competition, right?
- 4 A. Yes.
- 5 Q. Okay. So do you know the names of any other
- 6 refiners who our on the USW pattern that Beaumont used
- 7 to be on?
- 8 A. Other companies?
- 9 Q. Yes.
- 10 A. Yes.
- 11 Q. And who would they be?
- 12 A. PBF, Shell, Chevron, Valero, some of them have
- 13 sites that are, and some of them have sites that
- 14 aren't.
- 15 Q. Marathon?
- 16 A. Marathon.
- 17 Q. I didn't catch the name of the first one you gave.
- 18 A. PBF, P-B-F, three initials.
- 19 Q. PBF?
- 20 A. Yes.
- 21 Q. Okay. Shell, Chevron, Valero, Marathon.
- 22 A. Yes, I'm sure there's -- there's others.
- 23 Q. Okay. Do you know where these other refiners have
- 24 the 75 day notice language that you all negotiated in
- 25 2015?

1 A. I don't know that explicitly. I don't.

2 Q. You don't?

3 A. I don't. I don't know if they do, I don't know if
4 they don't.

5 Q. I've got a note here you said that Beaumont
6 averaged \$20 billion in earnings, but it was kind of an
7 incomplete note.

8 Could you fill that in for me? What were you
9 talking about?

10 A. Yeah. I think the question was not earnings but -
11 - but what was Beaumont's basically net sales. So
12 revenue.

13 Q. Okay.

14 A. And that's when I answered 20 billion.

15 Q. And that -- what year was that?

16 A. I think that was -- I was just using it is a
17 typical say average or a planning basis. A plan basis.
18 So basically like an average.

19 Q. Over like you mean --

20 A. It's a year basis but I'm saying not any
21 particular year was I referring to. Just if I was to
22 use what we considered to be like a corporate plan
23 pricing number that's what -- that's what it would come
24 out to be.

25 Q. And do you know any of the actual annual revenues?

1 A. Not off the top of my head. I mean, they're all
2 published so I mean, I could probably go to the website
3 and find the information.

4 Q. Oh sure. Yeah. I probably could do that too.

5 A. Yeah. I don't -- I don't know what they are off
6 the top of my head.

7 Q. Okay. That's what I was asking. If you knew?

8 A. No.

9 Q. Okay. Do you remember discussing the Union about
10 this operator A proposal of the Company's and the Union
11 suggesting that you train everybody up to operator A.
12 Did that come up? Do you remember that --

13 A. I do.

14 Q. -- in discussions?

15 A. Yes.

16 Q. What was the Union's proposal?

17 A. What I mentioned was we were in a conference room,
18 we had mentioned several different proposals. We had
19 mentioned taking something from the company which we
20 had a proposal to basically allow everyone below the A
21 operator to work that position. Another one was to add
22 what we considered to be an extra board for each shift
23 team, so an extra position. Another one was exactly as
24 you suggested was to just -- to just allow everybody to
25 be able to qualify as an A operator. The Union's

1 position was they did not want to trial a pilot or any
2 of that.

3 Q. Did the Union propose, and specifically Mr.
4 Morgan, did you have a conversation with him about just
5 training everybody up in a smaller unit for the A
6 position, see how it worked before they would like buy
7 into this pilot thing? Do you remember some
8 discussions along those lines?

9 A. No, I don't.

10 Q. You mentioned something about the contract has a
11 provision or had a provision for the employees who were
12 working that weren't As, they could decline the A
13 position and that was one of the reasons you said you
14 wanted to get rid of the A operator, right?

15 A. That's one. The other one is just in general
16 those -- those individuals can't work that position
17 without -- without qualifying into it. And typically
18 you can't qualify into it without having an opening.

19 Q. But you could train them, right? You could have
20 trained them. I'm not saying you --

21 A. Not if they have a declination in.

22 Q. Well, tell us about the declinations, how does
23 that work?

24 A. An employee fills out a piece of paper basically
25 that says I decline work in the position.

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1 Q. And what -- approximately what percentage of the
2 people had those declarations pending at that time?

3 A. It depends on the unit but we had some units with
4 100 percent of the people. Like the isomerization
5 light end area had essentially 100 percent of the
6 people with declinations in.

7 Q. How about the whole refinery?

8 A. If I had to guess, I'd say -- and this is I guess,
9 I honestly don't know off the top of my head, but maybe
10 40, 50 percent.

11 Q. And the contract provides that if you're trained,
12 now I'm talking about before your deletion of the A
13 operator.

14 A. Uh-huh.

15 Q. If you're trained as an A operator, even though
16 you're not in that position, the Company can require
17 you to perform that, right? Wasn't that your language?

18 A. It -- unless you have a declination in.

19 Q. Right. Is that correct?

20 A. That's correct.

21 Q. Okay.

22 A. But we had very few people who were trained as
23 extras into the A operator position.

24 Q. And I recall you mentioning several times this
25 supervisory -- I think it's supervisory console

1 operator; is that correct?

2 A. It's a single operator. It's a supervisor that
3 runs the console.

4 Q. What is the correct title of that?

5 A. Console supervisor.

6 Q. Okay. And you said that the Company was
7 successful in getting that position out of the
8 bargaining unit --

9 A. In the 80s.

10 Q. -- back in 1988, right?

11 A. Yes.

12 Q. When there was a strike? And you -- you just know
13 that from historical knowledge?

14 A. Correct.

15 Q. Can you tell us -- and we had -- we had a fellow
16 testify yesterday, guy by the name of Sanderson.

17 Do you know Mr. Sanderson?

18 A. I do.

19 Q. He testified he was a step up console supervisor.
20 Is there such a position?

21 A. Yeah. In order to -- to select people who are
22 going to be supervisors in all of our departments,
23 whether it's process, mechanical, the lab or our safety
24 group wherever we have wage, we allow our wage
25 workforce to step up into a supervisory job, work that

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1 position, demonstrate skills, knowledge and leadership
2 over time and then that's the group that we eventually
3 select from to promote to an actual supervisory
4 position over time.

5 Q. Do you recall how long Sanderson's been stepped
6 up?

7 A. I imagine that he got stepped up recently or
8 something. I don't know. I've been gone from the plant
9 for almost a year.

10 Q. Okay.

11 A. And he wasn't stepped up when I -- when I was
12 there.

13 Q. Okay. When you left do you recall how many of
14 those console operators were filled -- positions were
15 filled with step up employees?

16 A. We typically run in the process organization with
17 roughly 20 step ups out of -- out of step up
18 supervisors. I would say we typically run with about
19 20 people and that's out of an organization that has,
20 you know, 350 plus wage people.

21 Q. I'm just asking about the console supervisor, not
22 the --

23 A. Yeah, the --

24 Q. -- entire --

25 A. Okay. It would be even less than that 20 then.

1 So maybe somewhere around 10 to 12.

2 Q. And out of how many total console supervisors
3 positions?

4 A. Let's see, 9, 36, 45, probably somewhere around
5 50, 50 supervisors.

6 Q. Got it, thank you. You mentioned that when you
7 finish the BLADE project the Beaumont Refinery will be
8 the largest in the world?

9 A. Largest in the United States.

10 Q. In the United States, in terms of?

11 A. Crude -- crude throughput.

12 Q. Okay. I think today, is it true that the Motiva
13 Plant over there in Beaumont is the largest?

14 A. That is correct.

15 Q. In the United States?

16 A. Yes.

17 Q. And their employees are USW represented?

18 A. I believe so.

19 Q. And they're on pattern?

20 A. I'm not 100 percent sure.

21 Q. And are they doing an expansion project at this
22 time?

23 A. I don't know.

24 Q. And tell us when -- when you started the
25 construction for the BLADE project? You said it was

1 2018?

2 A. I believe it was -- it was in that time frame,
3 2018.

4 Q. And did you ever do any site work at Baton Rouge
5 or Baytown for the BLADE equivalent? I guess you told
6 us BLADE -- the B starts -- stands for Beaumont?

7 A. Right.

8 Q. But I'll just say that project?

9 A. No.

10 [Long pause]

11 Q. You had mentioned the classroom and field training
12 and the review board process for training operators?

13 A. Yes.

14 Q. Did any of the temporary workers go through that
15 same rigorous training while they were there during the
16 lockout?

17 A. Yes.

18 Q. And was it the same length of time?

19 A. It varied by individual, mainly because like one
20 of the individuals, I'll just give an example, that we
21 hired had left one of the competitors and went to work
22 for this contractor company because he wanted to come
23 to ExxonMobil. This individual had ten years of
24 experience on the hydrocracker unit. When he walked in
25 he knew our hydrocracker unit better than -- better

1 than almost all the operators that left. That
2 individual could draw it and operate it, you know,
3 almost immediately.

4 So for individuals that had experience like that
5 or had processed technology degrees, those individuals
6 were able to -- to go through the process a little bit
7 faster. There were some people in there that were
8 school teachers and others that had degrees that it
9 took them a lot longer and they probably took them, you
10 know, a good, you know, four months to qualify when
11 others probably qualified in less time.

12 Q. Got it. Now, you mentioned turnarounds, and you
13 said that's an industry term.

14 A. Yes.

15 Q. And it's something that happens on a regular basis
16 at all refineries, I guess?

17 A. That's correct.

18 Q. And the bulk of the work for a turnaround would be
19 done by contractors, right?

20 A. Yes.

21 Q. And you would use some of your own employees kind
22 of to supplement a little bit?

23 A. Our own employees on the process side have to shut
24 the facility down. They have to ready the facility,
25 they have to chemical clean it. So all of that work is

1 done by 100 percent by our workforce. Most of our
2 mechanical workers that are either supervisors or a lot
3 of our wage workforce actually step up into supervisory
4 jobs and actually supervise the contractors. And then
5 the majority of the actual physical work is done by
6 contractor specialists just because they're dealing
7 with a lot of specialty type of lifting and rigging
8 equipment that we don't really have the expertise for
9 with our own workforce.

10 Q. And I think you said -- you gave an example the
11 crude A unit did a turnaround in 2016?

12 A. Yes.

13 Q. And was that about the time you got there to
14 Beaumont?

15 A. Yeah. I got there roughly six months before that
16 turnaround started.

17 Q. Okay. Was that your first stint in Beaumont?

18 A. In Beaumont.

19 Q. And I think you mentioned that about 1,500
20 contractors were involved in that turnaround, and then
21 about 100 to 150 of the Exxon employees too?

22 A. Yes.

23 Q. Hourly employees?

24 A. Hourly plus supervision.

25 Q. But the 100 and 150, was that hourly plus

1 supervision?

2 A. Yes.

3 Q. Okay. I think I saw a note here that you left in
4 2016 to go to the headquarters in Spring?

5 A. I did.

6 Q. So how long were you in Beaumont and prior to
7 going to Spring?

8 A. I was in Beaumont for just shy of a year.

9 Q. One year, okay.

10 A. And then -- just shy, yeah. And then I went to
11 headquarters for just shy of a year as well, and then
12 came back to Beaumont.

13 Q. Okay. You mentioned the government efficiency
14 award that Beaumont got.

15 A. Yes.

16 Q. What years were they? You said two years I
17 believe.

18 A. Uh-huh.

19 Q. Did --

20 A. The -- the last two years.

21 Q. Was that the 2020 and 2021?

22 A. Yes.

23 Q. Okay.

24 A. Yep.

25 Q. That's the same year, years that they got the

1 President's Award?

2 A. That's correct. Yeah, there's -- there's actually
3 one here in this building if you look at the Vice
4 President's picture when you walk out in the hallway,
5 you can actually see the award is hanging. So
6 evidently this building was constructed and also
7 received that award.

8 Q. Oh, the efficiency award?

9 A. Uh-huh.

10 Q. Got it. Do you recall what year you had some mid-
11 term discussions with the Union about trying to reduce
12 overtime?

13 A. I think it was either late '17 or early '18.

14 Q. Did the Union have any response to you, I mean the
15 Company as it relates to overtime, like what you could
16 do to reduce overtime?

17 A. Yes.

18 Q. What was their response?

19 A. One of the other request was to reduce the number
20 of step up supervisors that we have. And I took action
21 and did that and worked directly with Mark. The reason
22 I worked with Mark because was there was a high number
23 of workers who were calling in sick as well, and so
24 part of this was also to get a lot of these workers
25 that were calling in sick to actually, you know, also

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1 come back to work.

2 So he did -- he managed to do that effort. I
3 managed to reduce some of that. So that was one of the
4 other activities that we worked on.

5 Q. Okay. And that was Mark Morgan who was the chair
6 of the Union committee at the time?

7 A. Yes.

8 Q. So when you said earlier that you talk to the
9 Union about these things, and at least my notes reflect
10 it, that you said the Union didn't want to participate.

11 A. That specifically in the A operator which was
12 different than the question you just asked, which was
13 an overall overtime.

14 Q. Well again, and the record will speak for itself,
15 but my notes reflect that you said you showed some
16 options to the Union about reducing overtime and
17 fatigue; is that true? Is that what you did?

18 A. I did.

19 Q. Okay. And you've already told us what Mr. Morgan
20 suggested to you and you and him worked on that?

21 A. That's completely two separate times, completely
22 two separate discussions, completely two separate
23 entities. One had absolutely nothing to do with the
24 other.

25 Q. Okay. That wasn't the midterm discussion that I

1 asked you about?

2 A. Nope.

3 Q. Okay. Well, let me start over then. When did you
4 have the midterm discussions with the Union that you
5 referred to in your direct testimony?

6 A. So my discussions started with and were mainly
7 with and presented to Darrell Kyle, who was the
8 President of the Union. Darrell Kyle was in the
9 conference room with me and he had brought in several
10 others with him in that conference room. Mr. Mark
11 Morgan was not in the conference room the day that I'm
12 referring to.

13 Q. Okay.

14 A. But I sat on the whiteboard and drew out all of
15 the options in front of Darrell and several other
16 members, and we worked through specifically the A
17 operator position and various options on how to reduce
18 fatigue and overtime in the A operator role. And what
19 I'm referencing to is not only that discussion but we
20 also talked about various types of shift schedules and
21 changing the DuPont schedule to other shifts schedules.
22 There was multiple things that went into the
23 conversation.

24 Darrell went back to the committee and had a
25 discussion and then came back to me and specifically

1 said they weren't interested in any of that and they
2 weren't interested in changing any shift times and
3 shift schedules and everything, so we ended the
4 discussion. There was no further discussion on that,
5 on the A operator position after that.

6 Q. And approximately when was that conversation?

7 A. Like I said, it was -- I started mid-'17, it was
8 probably, I don't know, somewhere between six months to
9 a year after I was -- I was working there as the
10 process manager. So that's why I was thinking it was
11 maybe early '18.

12 Q. Okay. And when was the discussion that you had
13 with Mr. Morgan about reducing overtime?

14 A. My recollection was -- was it was at the end of
15 the year. We tend to have a lot of operators around
16 hunting season that tend to call in sick and they tend
17 to all become sick during hunting season and they don't
18 want to come to work.

19 We had one particular unit, the hydrocracker unit,
20 that had -- that had at one point in time half a dozen
21 plus operators that weren't there and overtime was
22 high. When I say operators, I'm not referring to A
23 operators, I'm referring to operators across all three
24 of the classifications.

25 During that time I remember Mark was also saying,

1 hey, you guys have several step ups. He was correct.
2 We had one of the operators that we actually had
3 stepped up. So we stepped that individual backed down
4 to work some of the overtime and he also then called
5 some of the operators at their house and said hey, for
6 those of you that may not really be sick, let's get
7 back to work.

8 And at least two or three other people showed up.
9 So it was kind of a mutual thing between the two of us,
10 whenever there was issues to try to -- to try to see if
11 we couldn't resolve them. But like I said, two
12 separate things.

13 Q. Was that late 2017?

14 A. I want -- it was -- it might have been late '17.
15 It might have been late '18, and I don't remember. But
16 it was towards the end of the year.

17 Q. Okay. And I think that you said that the lockout
18 decision was made mid-April of 2021; is that --

19 A. That's correct.

20 Q. Okay. And that letter that was presented to the
21 Union at the Union hall on April the 23rd, when was
22 that typed up?

23 A. I'm not sure. It could have been the day before.
24 We wouldn't have done any typing, it's -- I don't know,
25 somebody in HR that -- that works for Blake or Blake

1 would have -- would have typed it.

2 Q. But you brought that letter with you to the
3 bargaining session at the Union hall that day?

4 A. Yes.

5 Q. Now, I'm a little fuzzy on the wage discussion
6 that you were having, the refinery you talk about the
7 wage -- wage differential between the refinery and the
8 blending and packaging.

9 Could you explain that to me a little bit more?

10 A. So because the contract has always been linked and
11 both the blending and packaging plant workforce that
12 are represented, as well as the refinery workforce is
13 represented, because it's all one contract they've --
14 they've gotten raises over time that are the same. So
15 anytime there's -- there's a raise, if the raise that
16 is negotiated through the pattern bargaining is 3
17 percent, then they all got 3 percent. Okay.

18 So over time these raises have -- and these wages
19 have increased the same. At the other blending and
20 packaging plant facilities that we own, and others,
21 they're separated, their separate contracts and -- and
22 the wage rate hasn't -- hasn't going -- gone up the
23 same as it has in a refinery.

24 A refinery worker deals with way more hazardous,
25 you know, things and so the industry has typically than

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1 paid more for that position than somebody who's working
2 as a package operator or forklift driver. These people
3 do -- the people that are in that business they don't
4 go to college and get the process technology degree.
5 You don't have to have it to be a forklift driver or to
6 be -- to be, you know, somebody that -- that is dealing
7 with packages and just moving boxes and packages
8 around.

9 Plus they're not dealing with -- with, you know,
10 things that are operating at thousands of degrees in
11 temperature and -- and 3,000 plus pounds of pressure
12 that we have in all of our units that our -- that are
13 workforce is trained, highly trained and skilled to
14 deal with. They're dealing with an assembly line of
15 Mobil One that if it spills on you or on the ground,
16 you just wipe it off. It's not -- it's not flammable
17 at the room temperature that -- that it's at.

18 So just from those things alone, there's a
19 substantial difference from the two -- the two -- the
20 two workers do at both. And so that's the point that I
21 was making early is that -- is that part of our
22 discussion with management was evaluating both of those
23 positions and with the understanding that we were
24 overpaying substantial for a blending and packaging
25 plant forklift driver who is making, you know, probably

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1 \$15 an hour from a forklift driver that works for
2 Amazon or for, you know, some other company that
3 they're doing essentially the same sort of work.

4 So we were overpaying for that position and so we
5 felt that -- that going into this we needed to have a
6 differentiation in the wage increase for both the
7 blending and packaging plant workforce versus the
8 refining workforce.

9 Q. Okay. So you're not telling us that they make the
10 same amount of money as the operators in the refinery,
11 right?

12 A. Pretty close. An operator at the blending and
13 packaging plant is essentially paid the same amount as
14 an operator in the refinery.

15 Q. Okay. The same hourly rate?

16 A. Pretty close. If not it's pennies difference.

17 Q. And now, you said an operator in the refinery
18 compared to an operator in the blending plant.

19 A. Uh-huh.

20 Q. That's not the Amazon forklift operator you're
21 talking about?

22 A. No, it's probably a, you know, 20 to 30 -- it's
23 probably a 20 or 30 percent of the workforce there.

24 Q. Okay. But -- but the --

25 A. Which is still they don't deal with the same

1 hazards, the same pressures, the same temperatures, the
2 same type of hydrocarbon, the highly flammable
3 mixtures, they don't deal with any of that.

4 Q. Sure. No, I understand that. But I'm trying to
5 distinguish between the workers you were describing a
6 moment ago who operate forklifts and do packaging.

7 A. Right.

8 Q. Okay. Are they making the same hourly rate as the
9 refinery operators?

10 A. No. But they're making substantially higher than
11 an equivalent role in an equivalent business.

12 Q. I understand that. When you testified earlier
13 about they, meaning the blending and packaging folks
14 got patterned wages, you weren't talking about the
15 hourly rate, you were talking about the percentage
16 increase?

17 A. Correct.

18 Q. Okay. I have a better understanding now, thank
19 you.

20 A. Okay.

21 Q. Now, you said the Company lost \$20 billion plus in
22 2020?

23 A. Yes. Yes, sir.

24 Q. How about 2021?

25 A. I don't remember off the top of my head. And I

1 honestly don't remember, I'd have to go back and look.

2 Q. It wasn't a lost though, was it?

3 A. The first half of the year we were still losing.

4 The very end of the year in the fourth quarter the

5 Company had made money. So I don't remember what we

6 ended the year.

7 Q. For the whole year?

8 A. I don't remember where we ended the year.

9 Q. But it's all public record, isn't it?

10 A. Sure, yeah.

11 Q. Do you remember 2019?

12 A. Not for the Company. I do remember Beaumont's

13 number, it was -- it was pretty close to break even.

14 Q. Now, talking about the wages a little bit more

15 because you said that you felt that it was important

16 that you offered some wage increases to hopefully, and

17 these are my words not yours.

18 A. Uh-huh.

19 Q. You know, convince the employees to vote for the

20 Company's proposal.

21 A. Yeah, but basically I mean, we knew we were going

22 after some things that were important to -- to the

23 Union.

24 Q. Right.

25 A. So offering wage increases was -- I hope to get a

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1 ratified agreement and not a work stoppage.

2 Q. Right. Like I said, I think there's some song
3 about little honey makes the medicine go down, that's
4 kind of the theory.

5 A. I don't know, I've never -- never used that
6 terminology but.

7 Q. Oh sure. No, that was me.

8 A. Okay.

9 Q. That was me. I know it's not you, but. I mean,
10 that's what you're talking about. You were taking some
11 things away that you knew were important to the Union,
12 and you thought well, we'd better come up with a little
13 wage increase.

14 A. I don't know if it's little, I think if you go
15 back into the probably the last 50 years of
16 negotiations between pattern bargaining and -- and the
17 Company, I think the typical, and maybe even highest
18 increases is usually in that 3 to 4 percent.

19 I think we were matching that in a time when the
20 Company was bleeding out cash. I don't know if that's
21 making honey or go down or whatever you said. I look
22 at that as -- as pretty substantial. I personally went
23 three years without a raise, three.

24 Q. So what was the --

25 A. I'd be more than happy to show you that.

1 Q. No, no, no. That's quite all right, I take your
2 word for it.

3 What was the percentage you were offering for each
4 year?

5 A. It was whatever it was going to be negotiated at
6 the pattern bargaining, which I think averaged out to
7 be the 3 percent if I'm remembering correctly.

8 Q. Okay. So there wasn't any specific percentage.
9 And you're talking about for the refinery?

10 A. For the refinery, that's correct.

11 Q. Okay. And for the B&P folks, what were the
12 percentages?

13 A. The percentages were zero in the first three years
14 and then I think it was .75, one, one and a half I
15 think for the next three years. I'm sure I'm close, I
16 might not be exactly right, but.

17 Q. Was this a five year --

18 MR. STANLEY: Excuse me, Pat.

19 Your Honor, it's not really an injection but I
20 just want to make sure everyone understands we made --

21 THE WITNESS: Multiple offers.

22 MR. STANLEY: Yeah, multiple -- numerous wage
23 proposals, I just want to make sure we know what, Pat,
24 you're talking about.

25 MR. FLYNN: Okay. Sure, I appreciate that.

1 MR. STANLEY: RFA, first offer, LBFO, that's all.

2 MR. FLYNN: Yeah, let me break that down. If you
3 can remember.

4 JUDGE WEDEKIND: Well, what he just testified to,
5 what was that? Was that --

6 THE WITNESS: I was going off of what the final
7 was. Yeah.

8 JUDGE WEDEKIND: Okay. Thanks.

9 THE WITNESS: Yeah.

10 JUDGE WEDEKIND: What was voted on?

11 THE WITNESS: What was voted on.

12 JUDGE WEDEKIND: Okay, thanks.

13 THE WITNESS: Yeah. But honestly, I mean, I don't
14 remember specifically at each stage what the number
15 was.

16 Q. BY MR. FLYNN: Okay.

17 A. Without -- without going back and actually looking
18 at the documents.

19 Q. Okay. So let's go back to the final. For B&P,
20 zero, zero, zero and how many years was this, was this
21 a five year, six year?

22 A. Six year.

23 Q. So 000.75 and then --

24 A. I think it was one, one and a half.

25 Q. One and then 1.5?

1 A. Uh-huh.

2 Q. Okay. And for refinery, it was just the pattern
3 percentage?

4 A. Yeah, I think the first year it started maybe at 2
5 percent, eventually it became zero, and then the rest
6 of it was pattern wages, pattern increases.

7 Q. Okay. So for the refinery you had the first two
8 years --

9 A. No. This is going back, I'm trying to remember.
10 I think that either in the -- the end of January, I
11 want to say it might have been 2 percent is what was in
12 the -- was in the offer. I think where we ended, since
13 we ended a whole year later and there was multiple
14 changes with us adding things and stuff to offers and
15 then adjusting certain things, I think where we ended
16 was 0 percent for that first year.

17 Q. Okay.

18 A. And then the other years were pattern.

19 MR. STANLEY: Hey, Pat.

20 MR. FLYNN: Yeah.

21 MR. STANLEY: Just a quick side note.

22 MR. FLYNN: Sure.

23 MR. STANLEY: You certainly have a right to try
24 your case, just a heads up, we do plan on addressing --
25 addressing the actual proposals with another witness.

1 MR. FLYNN: Oh sure.

2 MR. STANLEY: Just throwing that out there.

3 MR. FLYNN: Yes, I thought so.

4 MR. STANLEY: And we have the proposals as well.

5 MR. FLYNN: All right.

6 Q. BY MR. FLYNN: These 20 retired supervisors that
7 you hired to train your supervisors, and I forgot what
8 year that was, could you refresh me on that, please?

9 A. That was in the -- the 2017, the late 2016 -- late
10 2016 all the way through '17.

11 Q. Okay. 2016, 2017. So they weren't part of your
12 EMCO team?

13 A. No.

14 Q. There was a different objective for them?

15 A. Yes. We were going through trying to transform,
16 you know, do a transformational change at the site and
17 really improve the business, make Beaumont competitive,
18 it was part of that effort.

19 Q. Okay. Now, think you testified on direct and I'm
20 not sure if -- if the question was whether you ever
21 discussed decertification or getting rid of the Union,
22 or whether the Company ever discussed decertification
23 or getting rid of the Union.

24 And you said -- my notes say you never discussed
25 decertification or getting rid of the Union. Was that

1 answer just you personally? It wasn't the Company,
2 right?

3 A. I don't believe that was --

4 MR. STANLEY: Objection.

5 THE WITNESS: -- the question.

6 MR. STANLEY: Just the timeframe. I believe I
7 asked about at specific points.

8 MR. FLYNN: I don't recall -- I don't have any
9 time frame. The next question I have in my notes is
10 that in March and April there wasn't any progress on
11 the must haves, so I don't know if it was before March
12 and April or when?

13 JUDGE WEDEKIND: Well, at that -- the initial
14 question had to do with committee. The context was did
15 you discuss the decertification in the context of the
16 bargaining committee, right? Or the --

17 MR. STANLEY: Can I recap? I can in 30 seconds
18 recap the timeline that I asked about.

19 JUDGE WEDEKIND: Okay. Go.

20 MR. STANLEY: I did ask about during the entire
21 2020 RFA discussions and RFA process. I believe at the
22 time strike and lockouts -- a strike and lockout notice
23 was initiated and then --

24 JUDGE WEDEKIND: The request for authorization
25 process -- I thought he testified that he didn't

1 actually make the RFA until --

2 THE WITNESS: December.

3 MR. STANLEY: The formal RFA was submitted and
4 approved in December. But we call that entire -- well
5 --

6 JUDGE WEDEKIND: Okay.

7 MR. STANLEY: -- the entire preparation and
8 processes we're informally dealing with management and
9 within committee. You could loosely refer to all of
10 that as the RFA process but correct. That concluded
11 formally, at least the first time in -- in December
12 2021.

13 JUDGE WEDEKIND: '21.

14 MR. STANLEY: But then I asked --

15 JUDGE WEDEKIND: And that just gives you --

16 MR. STANLEY: -- oh, excuse me.

17 JUDGE WEDEKIND: -- the context for. That's the
18 kind of context I think I'm looking for. Okay. But
19 you can ask that question, kind of narrow it to when
20 the discussions took place and would you and --

21 MR. FLYNN: Yes, Your Honor.

22 Q. BY MR. FLYNN: Mr. Matherne, do you -- do you
23 recall what time frame you were speaking of as it
24 relates to never discussing desertification or getting
25 rid of the Union?

1 A. Yeah. It was leading up to the bargaining. So --
2 so that whole time frame when we were meeting, August,
3 September, October, November, all the way through
4 December, to get to -- to an RFA process,
5 decertification was not part of those discussions.

6 Q. All right. Well, what about after that time?
7 During the bargaining?

8 A. The only time I really recall us getting into that
9 is -- is really probably I would say late in
10 bargaining. You know, after there was a petition, kind
11 of in that time frame where the Union had -- had a
12 member who was working through and getting a petition,
13 just as I mentioned earlier, there's always a lot of
14 conversations with senior management, senior management
15 asking us a ton of questions around scenarios. They
16 ask us to put together, you know, what sort of scenario
17 could -- could take place and they want -- they want to
18 know every -- every option that could possibly exist.
19 So at that point as a team we put together every
20 scenario. Anything that could possibly exist. So at -
21 - for sure, decertification was in those discussions.

22 Q. And -- and you think that started in, you said
23 late in the bargaining is your best recollection?

24 A. It was -- it was after lockout.

25 Q. Okay.

1 A. It was probably, if I had to guess, I'd say -- I'm
2 trying to remember October, November time frame.

3 Q. And so what scenario were you referring to?

4 A. There was a bunch of scenarios. I mean, it --

5 Q. That related to decertification?

6 A. Sure. They're looking for -- four ultimately how
7 are we going to end the work stoppage and get -- get an
8 agreement on our must haves. So what sort of things
9 would take place in order for us to -- to get there.

10 And so there's just a lot of back and forth and a lot
11 of questions around -- around, you know, how to -- how
12 to end this and get our workforce back -- back to work.

13 Q. And how did the decertification play into that
14 conversation?

15 A. I mean, if employees choose to decert away from
16 the Union, that is a way for them to come back to work.

17 Q. And --

18 A. So that is a scenario.

19 Q. And this is something that your negotiating team
20 was talking to the management team, we'll call it,
21 that's -- that's who you are talking about, who you're
22 having these conversations with?

23 A. Yes.

24 Q. And the management team, you've mentioned
25 frequently the gentleman that retired.

- 1 A. Steve Cope.
- 2 Q. Cope?
- 3 A. Cope, yeah.
- 4 Q. C-O-P-E?
- 5 A. C-O-P-E.
- 6 Q. All right. And you have not told us who else is
- 7 on the management team that you're talking about, that
- 8 you're talking to.
- 9 A. So Brian Ablett took over for Steve, so it would
- 10 have been Brian Ablett and then he has an HR
- 11 counterpart which would be Herve Galleron. So that's
- 12 the management team that I'm -- that I'm speaking to is
- 13 like the senior HR representative, Herve Galleron, and
- 14 then the regional director, Brian Ablett.
- 15 Q. Okay. Do you know if anybody from the Union
- 16 committee discussed with anybody or your bargaining
- 17 team about withdrawing the strike notice at some point
- 18 in time --
- 19 A. No.
- 20 Q. -- to get the people back to work?
- 21 A. No. That never came up.
- 22 Q. During the lockout, did the company demolish any
- 23 old parts of the refinery, doing like remodeling?
- 24 A. Yes.
- 25 Q. What -- what was that?

1 A. There were several units in 2016 that were taken
2 out of service that were no longer needed. So we had a
3 company that came in that was -- that was doing work
4 there to dismantle a lot of these old units that were -
5 - that were literally just sitting there, that had been
6 shut down, mothballed, however you want to call it.

7 And then outside of that there were -- there were
8 just a lot of different buildings where we had pockets
9 of workforce that worked. We were -- we were moving
10 our strategy towards more centralized maintenance and
11 having -- having a lot of our workforce centered around
12 one center of excellence. So where we can have a
13 higher collaboration between our workforce.

14 So we took some older buildings that had just been
15 vacant for decades and we -- we went and then cleaned
16 out those buildings and refurbish them and -- and took
17 older buildings that only maybe had two or three people
18 working in it that didn't allow for a very
19 collaborative work environment, that allowed us to be,
20 you know, more costly because -- because they were kind
21 of scattered around the plant and we took those
22 buildings and demoed them and moved -- moved the
23 workforce into a more efficient atmosphere.

24 Q. And do you recall what you did at the crude A
25 shelter building?

1 A. All Of our operator shelters, every single one of
2 them across the entire plant we -- we cleaned them out
3 and -- and did some refurbishment inside of the
4 operator shelters. Crude A was no different than any
5 of the others.

6 Q. And crude A was the one that had the
7 decertification lock box, do you know about that?

8 A. I do.

9 Q. And did you ever see that box?

10 A. No, I did not.

11 Q. What happened to it, do you know?

12 A. I have no idea.

13 Q. How did you know it was in there?

14 A. I just heard about it.

15 Q. Who told you?

16 A. Probably one of my shift team leaders.

17 Q. Did you know that an employee had permission to
18 put that up?

19 A. I didn't know if he had permission or not. That
20 wouldn't have come through me.

21 Q. Sure. No, I understand that. Now, you know, I
22 touched on this briefly before, and you touched on it
23 several times in your direct testimony about the -- the
24 supervisory console operators.

25 And I got -- and again, this is my impression, not

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1 necessarily your words, but your Company wasn't real
2 happy with the Union proposing to put those workers
3 back in the bargaining unit; would that be fair?

4 A. I don't know about happy or not. It just seemed
5 odd.

6 Q. I see. And do you recall if the Union ever
7 withdrew that proposal?

8 A. At some point they did.

9 Q. And do you recall when that was?

10 A. I do not. I recall it was after lockout, but I
11 don't recall when.

12 Q. Okay.

13 *[Long pause]*

14 Q. You had also testified that you told somebody that
15 well, we would end the lockout when we got a ratified
16 CBA with our must haves.

17 Do you remember saying something like that?

18 A. Yes.

19 Q. Who did you tell that to?

20 A. At pretty much every meeting that we had with the
21 Union, including sidebars. It's typically the way
22 Blake opened up every meeting was that we would -- Mark
23 asked the question when is the Company going to end the
24 lockout, Blake answered that question, when we have a
25 signed and ratified agreement. I think that's pretty

1 much how we started every single meeting.

2 Q. Okay. And -- and we see by General Counsel
3 Exhibit 5 the Company was telling the workers if the
4 Unions decertified the lockout would be over, you
5 mentioned that yourself just a few minutes ago.

6 A. I think that's also a fact.

7 Q. Yeah.

8 A. Yeah.

9 Q. So when did you start putting that word out?

10 A. Sometime after near the Union had enough
11 signatures for their petition.

12 Q. The Union?

13 A. Or whomever from the Union was -- was organizing
14 when they had the petition to go for a vote, sometime
15 after that.

16 Q. So you're talking about Mr. Sanderson?

17 A. Yeah, him and whoever else was organizing that.

18 Q. Okay. And when you say from the Union --

19 A. He's a Union member. It takes their -- somebody
20 from their membership to -- to do that. I mean, it's -
21 - it's, you know, it's part of their process. You
22 know, it's a worker right so.

23 Q. Yeah.

24 A. Yeah.

25 Q. Would you be surprised if Mr. Sanderson said he

1 hadn't been a member toward since 2015?

2 A. I'm not sure what you're talking about. I mean,
3 every one of our members that are out there are
4 represented by the Union.

5 Q. Okay. I -- I thought that what you meant, that
6 someone from the bargaining unit --

7 A. Okay.

8 Q. -- not necessarily a Union member. I mean, it
9 could be but it doesn't have to be.

10 A. Sure.

11 Q. Okay. I just wanted to make sure we're on the
12 same page on that.

13 A. Okay.

14 MR. FLYNN: Can we take a little break, Judge?

15 JUDGE WEDEKIND: Sure. Off the record.

16 *[Off the record]*

17 MR. FLYNN: Thank you, Your Honor. Just a few
18 more minutes.

19 JUDGE WEDEKIND: Sure.

20 Q. BY MR. FLYNN: Just to clarify something for me
21 that I had some confusion on. You're talking about 350
22 employees that we're having to cover all the work; is
23 that -- am I going down the wrong path here?

24 A. No. If -- you're talking about for when we go
25 into a lockout, you're referring?

1 Q. Right. Right. Tell me how that number fits in to
2 the 1,400 and then you've got contract maintenance I
3 guess going on?

4 A. We do -- we do. Yeah.

5 Q. And then you have temporary -- the temporary
6 workers?

7 A. Yeah. So the -- the -- first of all, we didn't
8 have -- we didn't bring in any contractors when we
9 locked out, so we didn't have any of those temporary
10 workers when we started. And -- and so the
11 workforce that I'm talking about is -- is that, you
12 know, we take our engineers and our supervisors and
13 managers and we roll those individuals over to the unit
14 to work, after they're trained and qualified. Those
15 that make up between the refinery and the blending and
16 packaging plan, that 350 number that I'm talking about.

17 Q. Okay.

18 A. Yeah. And -- and, you know, a lot of the other
19 resources that we have like procurement or -- or even
20 HR and stuff, like when we locked out and then Craig
21 asked me we were locked in for those first ten-ish
22 days, they -- they stayed home and didn't come in and
23 they worked on their computers from home doing their
24 jobs. And then once we got to the point where the
25 workforce was coming back to work, and then they came

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1 back to work as well.

2 Does that answer your question?

3 JUDGE WEDEKIND: Can I just follow up on this,
4 because I had the same question?

5 THE WITNESS: Yeah.

6 JUDGE WEDEKIND: First of all, did you even have
7 1,400 employees in May of 2021? You testified that you
8 have 1,400 now, right?

9 THE WITNESS: We did. Between -- between the
10 refinery and the blending and packaging plant.

11 JUDGE WEDEKIND: Okay.

12 THE WITNESS: So there's roughly about -- about
13 1,000, 1,100 in the refinery total.

14 JUDGE WEDEKIND: Okay.

15 THE WITNESS: And then another, you know, say 3 to
16 400 in the -- in the blending and packaging plant,
17 total employees.

18 JUDGE WEDEKIND: In 2021?

19 THE WITNESS: Uh-huh.

20 JUDGE WEDEKIND: Okay. And so -- it's not
21 accurate to say you were -- that 350 employees were
22 doing the work of 1,400 or they were?

23 THE WITNESS: No. No, no, no.

24 JUDGE WEDEKIND: All right. So it's --

25 THE WITNESS: Three and fifty we're doing the work

1 of the 650 locked out wage.

2 JUDGE WEDEKIND: Okay. That's fine, thank you.

3 And then you hired 150 contractors at some point?

4 THE WITNESS: Yes.

5 JUDGE WEDEKIND: Ten days in or something you
6 started?

7 THE WITNESS: Yeah, we didn't hire 150 initially.
8 We brought in roughly -- well, so we're bringing them
9 in through a contractor. So just if you think about
10 that, we're not interviewing any of these people, so
11 we're not vetting them.

12 JUDGE WEDEKIND: Okay.

13 THE WITNESS: So we're just bringing them in
14 because the contractor is saying hey, we have these
15 individuals that are available to work. So there was a
16 high turnover rate with these individuals. So we
17 brought in 50 people two -- about two and a half, three
18 weeks in. I would say a week or two later that 50
19 people was combed down to about 25 people.

20 JUDGE WEDEKIND: Okay.

21 THE WITNESS: Okay. And then we did -- we
22 repeated that effort about four or five more times over
23 the ten month span.

24 JUDGE WEDEKIND: Yeah.

25 THE WITNESS: And that eventually worked up to 150

1 people. So we didn't bring in 150 people right away,
2 we brought -- only brought in fifty of which only about
3 25 were there by -- by the end of May.

4 JUDGE WEDEKIND: Okay. Well that's very helpful.

5 THE WITNESS: Okay.

6 JUDGE WEDEKIND: I don't know if that's helpful to
7 you.

8 MR. FLYNN: No, that's exactly what I was trying
9 to sort out.

10 JUDGE WEDEKIND: All right.

11 Q. BY MR. FLYNN: Now, out of -- some of these 650
12 bargaining unit folks that were locked out.

13 A. Right.

14 Q. Some of them worked in B&P, some of them were
15 refinery operators, and some of them were maintenance
16 workers, right?

17 A. Correct.

18 Q. Right. Mr. Morgan he's a pipefitter?

19 A. Correct.

20 Q. He's not an operator?

21 A. Right.

22 Q. So were the 350 engineers and managers doing
23 maintenance work too, or did you have contract
24 maintenance?

25 A. Some of them or doing maintenance initially,

1 pulling pumps, doing some -- some pipefitting work.
2 Minimal, but some of them were. They were trained in
3 the mechanical work and in the mechanical workforce,
4 not as operators though. So there's two different
5 training programs to do that.

6 Q. Right.

7 A. But -- but yes. We also had a mechanical
8 workforce. We had, you know, if we were doing a crane
9 and lifting job or if we were doing some welding work,
10 of course we were using craft specialist for that.
11 Scaffold building, things like that, we did not train
12 our own workforce to do.

13 Q. But my question is, did you supplement the
14 bargaining unit maintenance crews that were locked out
15 with contractors in addition to the engineer managers
16 that did the minimal maintenance?

17 A. On the maintenance side --

18 Q. Yes, just maintenance.

19 A. Yeah, on the maintenance side we -- the
20 contractors that work in there, day in and day out were
21 -- were the same people that were working there after.
22 We didn't bring in additional. As a matter of fact, we
23 actually brought in less because we streamlined the
24 amount of -- the amount of things that were going on
25 and simplified the amount of work that we were -- that

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1 we were going to tackle going forward.

2 Q. All right. That was my question.

3 MR. FLYNN: That's all I have, Your Honor.

4 JUDGE WEDEKIND: Okay. I just want two -- two
5 clarifications on these two.

6 So I thought you testified that you spent 30
7 million on EMCO in 2015 --

8 THE WITNESS: Yes.

9 JUDGE WEDEKIND: -- does that sound right? Okay.
10 And just again, EMCO is only initiated leading up to
11 contract expiration?

12 THE WITNESS: Correct.

13 JUDGE WEDEKIND: Okay. And so that was all 2015,
14 EMCO and -- right?

15 THE WITNESS: Yes.

16 JUDGE WEDEKIND: Okay. And was that corporate
17 wide or was that just Beaumont?

18 THE WITNESS: No, just Beaumont.

19 JUDGE WEDEKIND: Just Beaumont?

20 THE WITNESS: Yes.

21 JUDGE WEDEKIND: So do you know what it was -- how
22 much was spent on EMCO in 2020 total?

23 THE WITNESS: Going up to the strike day, so
24 before -- before the Union gave us a strike
25 notification and we -- we responded with a lockout

1 notification, it was very little money was spent. You
2 know, maybe -- maybe a fraction, maybe a million
3 dollars at the most.

4 But then after that when we started to have to
5 bring in -- we brought in a company called Granny's
6 Kitchen, they come in with -- with multiple motorhomes
7 and dozens of workers, and so you start building up to
8 where you have to build all of this infrastructure and
9 you bring in all of these people, we start spending
10 money at that point. We started spending equivalent
11 types of money as 2015. I think it's somewhere in the,
12 you know, probably north of \$20 million.

13 JUDGE WEDEKIND: Uh-huh. And as that --

14 THE WITNESS: Part of the reason it was --

15 JUDGE WEDEKIND: -- through when? Through when
16 with the 20 million?

17 THE WITNESS: It start -- it started, you know,
18 once we got the strike notification and then I would
19 say all the way -- all the way through until the --
20 until the -- we had a ratified contract and the
21 workforce came back. At some point -- at some point
22 though, Judge, it was being offset because we didn't
23 have those workers there.

24 JUDGE WEDEKIND: Right.

25 THE WITNESS: So their salaries weren't being

1 paid.

2 JUDGE WEDEKIND: Right.

3 THE WITNESS: But then we had contractors that
4 were there, and so we were paying those -- those
5 contractors.

6 JUDGE WEDEKIND: All right. So I was thinking in
7 terms of maybe it would be better if we just looked
8 through May 1 -- up till May 1.

9 THE WITNESS: Yeah, I don't know --

10 JUDGE WEDEKIND: Do you have any idea what that
11 is?

12 THE WITNESS: -- that number off hand, but I mean,
13 I could quickly get it.

14 JUDGE WEDEKIND: I was just interested, you know,
15 as a comparison to put things in context.

16 THE WITNESS: Yeah. I would say it was probably -
17 - probably 15 million I would guess. Now, the -- some
18 of the reason it's lower, is because we started using
19 some of our own buildings. So one of the things we did
20 was we had cleared out a conference center. We
21 actually slept people on the floors and we just put up
22 piping and drapes and asked -- asked a bunch of our
23 workers to just sleep on the floor in a sleeping bag.

24 Whereas in the past we had went through the effort
25 where we brought in these bunkhouses so there was a

1 little bit of -- we were looking for any way to save
2 money versus some of the things we did in the past.
3 Had we repeated the same effort, it would have been on
4 the same magnitude.

5 JUDGE WEDEKIND: And just one last question that
6 occurred to me. Were you around in in 2015? Were you
7 aware of what was going on in Beaumont?

8 THE WITNESS: I wasn't -- I wasn't at that plant,
9 no. I was at Baytown at the time. I didn't get there
10 until a month or so after the contract was -- was
11 signed.

12 JUDGE WEDEKIND: Okay. That's it. Anything else?

13 MR. STANLEY: We had something come up, can we
14 just have another few minutes?

15 JUDGE WEDEKIND: Yeah, sure.

16 MR. STANLEY: I think we'll have none or maybe a
17 couple, but I'd like to confer with the team, just for
18 a few.

19 JUDGE WEDEKIND: Off the record.

20 *[Off the record]*

21 MR. STANLEY: Just one on that last line of
22 questioning actually.

23 JUDGE WEDEKIND: Okay. Redirect.

24 REDIRECT EXAMINATION

25 Q. BY MR. STANLEY: Phil, as you said, we can -- we

1 can pull actual numbers on EMCO costs. But step away
2 from that for a moment.

3 Just as a general rule, are -- are EMCO cost
4 increasing or decreasing as you get closer to a
5 potential strike lockout date?

6 A. Yeah, significantly increased. And they increase
7 exponentially once you get a -- a strike notification.

8 MR. STANLEY: Nothing further. Thank you.

9 JUDGE WEDEKIND: Yeah. Anything -- anything
10 further?

11 MR. DOOLEY: Nothing further, Your Honor.

12 JUDGE WEDEKIND: No, Your Honor.

13 JUDGE WEDEKIND: Okay. Thank you very much, Mr.
14 Matherne.

15 THE WITNESS: Thank you.

16 JUDGE WEDEKIND: All right. Let's go off the
17 record for a second.

18 *[Off the record]*

19 JUDGE WEDEKIND: Okay. All right. So we're going
20 to end for the day. We weren't sure how long this
21 witness was going to go, we'll resume at 9:00 o'clock
22 tomorrow. We have another witness that's about the
23 same length and we'll try to get that done and we'll
24 try to get out of here in time for flights. Okay. All
25 right.

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1 Off the record.

2 (Whereupon, at 3:50 p.m., Central, the hearing was
3 adjourned until 9:00 a.m., Central, on Thursday,
4 February 16, 2023.)

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CERTIFICATION

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This is to certify that the attached proceedings before the National Labor Relations Board (NLRB) in the matter of ExxonMobil Corporation, Beaumont Refinery, Case No. 16-CA-276089 et al, on the 15th day of February, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

David Molinaro, Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos. 16-CA-276089 et al.

EXXONMOBIL CORPORTATION, BEAUMONT REFINERY,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC.

Place: Houston, Texas
Date: February 16, 2023
Pages: 527 through 614
Volume: 4 of 4

OFFICIAL REPORTERS

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:	
EXXONMOBIL CORPORATION, BEAUMONT REFINERY,	Case Nos.
and	16-CA-276089
	16-CA-276092
	16-CA-276702
UNITED STEEL, PAPER AND FORESTRY,	16-CA-277103
RUBBER, MANUFACTURING, ENERGY,	16-CA-278743
ALLIED-INDUSTRIAL AND SERVICE	16-CA-287615
WORKERS INTERNATIONAL UNION, AFL-	16-CA-287625
CIO.	16-CA-288417

The above-titled matter came on for further hearing pursuant to adjournment, before Administrative Law Judge Jeffrey D. Wedekind, on Thursday, the 16th day of February 2023, at the Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas, at 9:05 a.m. central time.

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A P P E A R A N C E S

(continued)

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I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSSCOURT

PHIL MATHERNE

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JAY DAVIS

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E X H I B I T S

EXHIBITS

FOR IDENTIFICATION IN EVIDENCE

NONE

P R O C E E D I N G S

[Time Noted: 9:05 a.m. central time]

1 JUDGE WEDEKIND: Okay. So this is fourth day of
2 hearing on ExxonMobil. We're taking testimony from the
3 Respondent's side.

4 Counsel, are you ready to call your next witness?

5 MR. STANLEY: Yes, Your Honor, we're going to
6 recall Phil Matherne just for a few questions on a topic
7 that came up at the end of testimony yesterday.

8 JUDGE WEDEKIND: Okay. Let's move on.

9 DIRECT EXAMINATION

10 Q. BY MR. STANLEY: Welcome back.

11 MR. MATHERNE: Thank you.

12 Q. You're still under oath.

13 A. Okay.

14 Q. Before we go, I just want to pick up where we left
15 off at the end of yesterday's hearing to clarify some
16 EMCO cost numbers.

17 And all EMCO costs -- what were all EMCO costs up
18 to February 15th at Beaumont 2020, 2021?

19 A. Yeah, so the total spend for '20, all the way up to
20 the 15th, would have been less than a half million
21 dollars.

22 Q. And then the cost from -- the cost caused by the
23 February 15 strike notice through May 1st without

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1 shadowing.

2 A. Without shadowing, the cost was \$6 million.

3 Q. And then you testified that approximately a week
4 before May 1st you'd started the shadowing.

5 What was the additional cost of that shadowing
6 component leading up to May 1?

7 A. So a week of shadowing for us is \$1.6 million.

8 Q. And would those costs have continued post-May 1 had
9 there not been a work stoppage?

10 A. Yes. Yeah, so, I mean for a month of shadowing you
11 just multiply it by 4.2, 4.3 or whatever until it would
12 have essentially been \$7 million for shadowing for a
13 month.

14 Q. And then finally the -- after the lockout started,
15 what were the ongoing net labor costs?

16 A. The net labor costs were flat to maybe slightly
17 positive with all setting.

18 Q. When you say flat even, you're talking compared to
19 your ongoing ordinary labor operating costs --

20 A. Correct.

21 Q. -- with represented invoice?

22 A. Correct.

23 Q. All right. No further questions. Thank you.

24 JUDGE WEDEKIND: Any cross on that?

25 MR. DOOLEY: Just briefly, Your Honor.

1 CROSS EXAMINATION

2 Q. BY MR. DOOLEY: Mr. Matherne, so you testified that
3 those costs would have continued post-May 1; that's
4 assuming there was no extension, correct?

5 A. Extension -- if there was an -- let me answer it --
6 I think -- you're asking if there was an extension --

7 Q. Of the CBA and Strike and Lockout Notices were
8 withdrawn?

9 A. Yeah, so we would have continued to shadow. If
10 there was a 24-hour extension.

11 Q. I'm not asking about 24 --

12 A. Okay.

13 Q. -- I'm talking about a longer term. What we had
14 discussed yesterday, at two month, three month,
15 something along those lines.

16 A. Some costs would have continued mainly because we
17 would have to stay ready for EMCO, so we would have had
18 all of the contractors there for like security and all
19 of the housing contractors -- the Granny's Kitchen --
20 things like that we would have had to stay, which was
21 probably 75 to 100 people. So those people would have
22 been paid to stay at the site ready because if we let
23 them go, we'd -- there's no chance of us getting them
24 back.

25 Q. Okay. But a temporary extension like that was not

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1 something that was explored, correct?

2 A. It wasn't offered.

3 Q. And that is because the company wanted to lock
4 employees out, correct?

5 A. The Union never -- never asked for it or offered an
6 extension like that.

7 Q. Well the Union offered a one-year extension as we
8 discussed yesterday, right?

9 A. Yes.

10 Q. And the company -- your testimony was the company
11 did not want to accept that because it would have put
12 Beaumont on pattern, correct?

13 A. Correct.

14 Q. And there was no exploration from the company of a
15 shorter term extension, correct?

16 A. There was no extension to offer from the Union for
17 any other extension.

18 Q. And three days after the Union made that offer, the
19 company notified the Union that it intended to move
20 forward with the lockout on May 1st, correct?

21 A. I'm not -- I'm not sure about the timing.

22 Q. I think the record will speak for itself.

23 Nothing further, Your Honor.

24 MR. FLYNN: No questions, Judge.

25 JUDGE WEDEKIND: Okay. Anything else?

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1 MR. STANLEY: Nothing.

2 JUDGE WEDEKIND: Okay. Thank you --

3 WITNESS: Thank you.

4 JUDGE WEDEKIND: -- for your testimony.

5 All right. Do you have another witness ready to
6 go?

7 MR. SPITZ: Yes, Your Honor. The employer calls
8 Jay Davis, I think -- I got to grab him, I'll be in the
9 cafeteria.

10 JUDGE WEDEKIND: Okay. We can go off the record.

11 *[Off the record]*

12 MR. FLYNN: Your Honor, if I could just --

13 JUDGE WEDEKIND: Oh --

14 MR. FLYNN: -- make one announcement to --

15 JUDGE WEDEKIND: Just -- hold on --

16 MR. FLYNN: This can be on the record.

17 JUDGE WEDEKIND: Oh, okay. Go ahead.

18 MR. FLYNN: You know, we've been talking over the
19 last several days about the New Jersey documents.

20 JUDGE WEDEKIND: Yes.

21 MR. FLYNN: I jut got word that the USW Legal
22 Department has sent the company lawyers that 100-page
23 whatever it is, PowerPoint thing --

24 JUDGE WEDEKIND: Okay.

25 MR. FLYNN: -- this morning.

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1 JUDGE WEDEKIND: Okay. Did you receive it?

2 MR. FLYNN: It's in some type of a Dropbox or
3 something --

4 MR. SPITZ: I just got the e-mail.

5 UNIDENTIFIED SPEAKER: I have access.

6 MR. STANLEY: Your Honor, so far none of these
7 documents have impacted any testimony, but can we have a
8 few minutes to browse it?

9 JUDGE WEDEKIND: Sure. Let's go back off the
10 record.

11 *[Off the record]*

12 JUDGE WEDEKIND: All right, Mr. Davis, welcome.

13 WITNESS: Thank you.

14 JUDGE WEDEKIND: If you would, just for the record,
15 state your name and spell it for us.

16 WITNESS: My name is Jay, J-a-y, Davis, D-a-v-i-s.

17 JUDGE WEDEKIND: All right. Thank you very much.
18 (Whereupon,

19 **JAY DAVIS**

20 having been sworn/affirmed, was called as a witness
21 herein, and was examined and testified, as follows:)

22 JUDGE WEDEKIND: Counsel?

23 DIRECT EXAMINATION

24 Q. BY MR. SPITZ: Mr. Davis, by whom are you employed?

25 A. ExxonMobil.

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1 Q. And what is your position with ExxonMobil?

2 A. I'm the America's Labor Relations Manager.

3 Q. And as America Labor Relations Manager, what are
4 your primary responsibilities?

5 A. So I have oversight for labor relations, for
6 Canada, the US, and South America, and I also at times
7 get involved in global labor matters that are outside of
8 those regions.

9 Q. How long have you been in this role?

10 A. Since August of 2016.

11 Q. How long total have you been in that role?

12 A. Twenty plus years -- a little over 20 years.

13 Q. Has all that time been in labor relations and human
14 resources?

15 A. Yes.

16 Q. What is your educational background?

17 A. I got an undergraduate degree in finance from
18 Michigan State University, and a graduate degree in
19 human resources and labor relations from Michigan State
20 University.

21 Q. Outside of your role at ExxonMobil, do you have any
22 prior experience in labor relations?

23 A. Yes. I was a package loader for United Parcel
24 Service and a Teamster.

25 Q. Now, going back to your current role, what role, if

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1 any, do you have in negotiating collective bargaining
2 agreements?

3 A. So in my current role I help our various sites plan
4 and develop strategies for upcoming negotiations and do
5 some site training.

6 Q. Do you directly participate at the table?

7 A. Not in my current role, no, but I have in the past.

8 Q. And in terms of preparation, what -- how do you
9 assist in preparation?

10 A. So we identify who are going to be the bargaining
11 teams and we go through and look at our collective
12 agreements, how they compare relative to other
13 collective agreements, what is the grievance and
14 arbitration history, and look at where the business is
15 going directionally, what we might need to achieve in
16 the upcoming negotiations.

17 Q. So that's in terms of formulating goals?

18 A. Yes.

19 Q. And what about devising actual proposals? Do you
20 assist with that at all?

21 A. Yes. I help the site teams -- once we decide what
22 our strategy and objectives are going to be, help them
23 to develop specific proposals.

24 Q. How far in advance of contract expiration does the
25 team typically begin to prepare?

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1 A. Generally a year.

2 Q. And when would your involvement begin?

3 A. At the start. Typically, once we've got --
4 identified who's going to be the bargaining lead, I
5 start to work with them on planning for the upcoming
6 bargaining event.

7 Q. How many bargaining units does ExxonMobil have in
8 the United States?

9 A. Twenty-five.

10 Q. And are you responsible for all of those?

11 A. Yes. All fall under my purview.

12 Q. How does that quantity of collective bargaining
13 relationships compare with the industry generally?

14 A. ExxonMobil has a large scale in multiple business
15 units. We have a large number of agreements relative to
16 a lot of our peers.

17 Q. Which segments of the company are unionized?

18 A. We've got collective bargaining agreements in all
19 three of our operating business lines. The upstream,
20 downstream and chemicals all have collective agreements.

21 Q. How many of those agreements go back let's say more
22 than 30 years?

23 A. Virtually all of them.

24 Q. How many lockouts have there been in the history --
25 in the US -- in the history of ExxonMobil?

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1 A. Only one, the Beaumont 2021 lockout.

2 Q. How many strikes have there been in the history of
3 ExxonMobil?

4 A. None.

5 Q. When was ExxonMobil incorporated?

6 A. ExxonMobil was incorporated in 2001 when Exxon and
7 Mobil merged.

8 Q. And to your knowledge were there any strikes in
9 ExxonMobil -- you know, the Exxon and Mobil prior to
10 2001?

11 A. Yes, in '80s there was some national strikes in the
12 1980s, early 1980s and then in 1988, Beaumont had an 89-
13 day strike.

14 Q. Now, have you ever worked at Beaumont?

15 A. Yes.

16 Q. When was that?

17 A. I worked in Beaumont from 2013 to 2015.

18 Q. And did that time encompass all of the 2015
19 bargaining?

20 A. Yes.

21 Q. What was your role at the time?

22 A. I was the area human resources manager and I was
23 the company's lead negotiator for the 2015 negotiations
24 with the United Steelworkers.

25 Q. What were the company's goals in the 2015

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1 negotiations?

2 A. In 2015, we had two primary goals. One was to
3 separate the Beaumont Agreement from the pattern
4 expiration date. And the second goal was to achieve a
5 strike lockout notice period. The contract had a 24-
6 hour notice period in it. We wanted to achieve a longer
7 duration strike notice lockout period.

8 Q. And what is your understanding of what pattern is?

9 A. So pattern is the time when most of the industry
10 agreements expire. The international union, an elite
11 company sit down to negotiate over term and wages and
12 there's often some other topics involved in that
13 discussion. And out of that comes an agreement with the
14 lead company that then the other companies -- it's a
15 voluntary agreement -- and other companies decide if
16 they want a pattern or not. The practice has been the
17 majority of the time the terms that come out of that are
18 patterned across the industry.

19 Q. And in your role as the top labor relations
20 official at ExxonMobil, how does being on pattern impact
21 a site?

22 A. So being on pattern subjects you to national
23 strikes and puts more uncertainty in the equation. You
24 have the potential of strike activity as part of the
25 Union's plan to try to put pressure on either one

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1 company or multiple companies with the industry to
2 achieve their objectives.

3 Q. And during your tenure with ExxonMobil, have you
4 seen any of these type of industry strikes?

5 A. Yes.

6 Q. When was that?

7 A. In 2015, there was strikes set around 15 sites.
8 They struck some companies, some companies they did not,
9 they struck some sites, others they did not, but in 2015
10 there was a number of strikes related to national
11 negotiations.

12 Q. All USW?

13 A. That's correct.

14 Q. All pattern sites?

15 A. That's correct.

16 Q. And in 2015, which ExxonMobil locations were on
17 pattern?

18 A. So in 2015, there was the Torrance Refinery, the
19 Shell Met Refinery, the Billings Refinery, and the
20 Beaumont Refinery were all on pattern.

21 Q. So four?

22 A. That's correct.

23 Q. And what concerns, if any, did that create for the
24 company?

25 A. Well, with multiple sites on pattern, that subjects

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1 you to having those strikes all struck at the same time
2 which would mean you would need to have the ability to
3 operate those sites. So, in 2015, we had a number of
4 sites that could have been involved in national strikes.

5 Q. So why was one of Beaumont's primary goals moving
6 off pattern in 2015?

7 A. The company was looking at various options for
8 expansion and Beaumont was one of the potential sites.
9 One of the considerations and for achieving that capital
10 was to try to make sure that it was insulated from
11 having the potential of a strike or a work stoppage to
12 impact the startup or project execution.

13 Q. And at that time was Beaumont guaranteed to get
14 that expansion?

15 A. No.

16 Q. What needed to happen for Beaumont to get that
17 expansion?

18 A. Beaumont needed to, first of all, improve their
19 operation performance. Beaumont had been a very poor
20 performing site relative to our other sites worldwide
21 operationally. And then when we looked at the Beaumont
22 contract internally, it was one of the only sites that
23 was in consideration that was on pattern, and it had a
24 lot of number of things in the contract that inhibited
25 flexibility that we didn't see in a lot of the other

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1 large contracts.

2 Q. And in 2015, did the Union give the company strike
3 notice?

4 A. Yes.

5 Q. And had that happened before in the history of
6 ExxonMobil?

7 A. It had happened months before, yes.

8 Q. All right. Where at?

9 A. It happened in Baytown in 2013.

10 Q. And so Beaumont was only the second time?

11 A. Correct.

12 Q. Was there a strike or lockout -- now, let's talk
13 about Baytown just a little bit ago, you mentioned there
14 was a strike notice in Baytown in 2013.

15 Was there a strike or a lockout in Baytown in 2013?

16 A. Yes. In -- there was not a strike or a lockout,
17 there was the strike and lockout notice given, and then
18 there was an agreement reached very -- on our final
19 offers, or very shortly after that strike notice was
20 given. So both parties -- the Union gave a strike
21 notice first, the company responded with a lockout
22 notice, and then an agreement was reached within days
23 after that.

24 Q. With -- you said, "days." Would that be less than
25 a week?

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1 A. Les than a week.

2 Q. And in Baytown, if you recall, what was the
3 substance of the Union strike notice? What did it say?

4 A. So in Baytown, the contract at the time had a 60-
5 day provision where the Union had to give 60 days notice
6 before they went on strike. And so that -- their notice
7 essentially notified us that in 60 days they were going
8 on strike.

9 Q. By the way, when you said a moment ago that "an
10 agreement was reached within days," if you know, did the
11 company have a last best and final offer on the table
12 prior to the strike notice?

13 A. Yes.

14 Q. And if you know, was that what the agreement was?

15 A. Yes.

16 Q. So the Union accepted the company's last best and
17 final offer?

18 A. Yes.

19 Q. So, in 2013, what significance, if any, did the
20 company attach to receiving the Baytown strike notice?

21 MR. DOOLEY: Your Honor, I'm going to object to --
22 on relevance just that he's on early negotiations that
23 happened in, you know, years ago. It's a different
24 bargaining unit.

25 MR. FLYNN: Your Honor, I would also object to the

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1 repetitiveness of a lot of the testimony. It's not a
2 hundred percent but a lot of it we heard from the last
3 witness.

4 JUDGE WEDEKIND: Well, I'm not inclined to stop it.
5 It might be relevant to end this. It's not all
6 repetitive. So I am going to overrule your objection
7 for now.

8 Q. BY MR. SPITZ: So, I believe the question was, what
9 significance, if any, did the company attach to
10 receiving the Baytown strike notice?

11 A. It was significant because once a strike notice is
12 in place, we then had to start fully preparing for what
13 we call ExxonMobil continuous operations or EMCO to
14 prepare for to operate in the event of a strike.

15 Q. And why did the company respond to the lockout
16 notice in Baytown in 2013?

17 A. This has been our plan and it's really to ensure a
18 seamless transition operating our refineries a really
19 difficult task. You have a lot of moving parts. So
20 having a lockout notice in place allows us to have a
21 seamless transition in the event there's a work
22 stoppage.

23 Q. So meaning if the strike notice expires, the
24 company has the option to lockout?

25 A. Then that -- yes, it gives the company the ability

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1 to lockout at that time, too, correct.

2 Q. In the history of ExxonMobil, how many lockout
3 notices has the company issued?

4 A. Three.

5 Q. And that would be which sides?

6 A. Baytown 2013 negotiations, the Beaumont 2015
7 negotiations, and the Beaumont 2021 negotiations.

8 Q. And those were all in response to a union strike
9 notice?

10 A. Yes. I think earlier I may have said we had two
11 lockout -- or two strike notices given. In 2021, we
12 also got a strike notice from Beaumont.

13 Q. Okay. So with returning back to Beaumont in 2015,
14 following the receipt of the strike notice, what steps,
15 if any, did the company take to prepare for the
16 possibility of a strike?

17 A. So, in 2015 in Beaumont, we then essentially got
18 this facility situated so that we could operate it if
19 there was a strike. We trained -- got -- had
20 supervisors trained, we had food and lodging. I mean we
21 had air mattresses all over the refinery because we had
22 to be able to operate and run the facility without,
23 potentially without the represented workforce.

24 Q. So, receipt of that strike notice initiated the
25 full on EMCO then?

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1 A. Yeah, we started shadowing where supervisors --
2 the, you know, essentially went out to the post and
3 monitored the post, and it is -- when we got the strike
4 notice in 2015, it was full-on preparation that the
5 Union had given every indication that they were going on
6 strike consistent with that notice.

7 Q. So, I think this is in your prior testimony, but
8 just to make sure it is, what strike notice was included
9 in the Beaumont contract in 2015 -- prior to the
10 expiration in --

11 A. At the time the contract provided for a 24-hour
12 notice by either party.

13 Q. All right. And so once that notice expire -- once
14 that notice expired, the Union could strike at any time?

15 A. Yes, sir.

16 Q. Did the parties agree on any kind of extension?

17 A. We had discussions. Eventually the Union elected
18 to not strike the -- we tried to have dialogue
19 throughout the day, they wouldn't give any indication of
20 what their plans were. Eventually, about 11:30 at night
21 we met. They indicated that they wouldn't go on strike.
22 They offered a rolling 24-hour notice at the time. We
23 share some feedback, but that didn't -- that was already
24 in the Agreement. There's already a 24-hour notice in
25 the Agreement. We asked for some additional notice

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1 period -- 72 hours. We debated -- we tabled different
2 ideas to the Union at the time. They wouldn't budge.
3 They said, you know, essentially, that the notice you
4 have is -- this is the extent to what we'll do on a
5 notice in 24 hours.

6 Q. So there was only a 24-hour notice thing?

7 A. That's correct.

8 Q. All right. And was that sufficient for the
9 company?

10 A It caused a lot of hardship. When you look at
11 having to continue to be ready for a strike for -- on
12 any 24-hour notice and, in fact, you know, supervisors
13 have to remain qualified and out shadowing.
14 Essentially, you have a lot of people that are doing two
15 jobs. You have your engineers that have to come back
16 from their job and continue to be trained and qualified.
17 It hurts your ability to move people around. It's a
18 significant impact. It -- can you make it work? Yes.
19 Is it -- does it cause a significant amount of
20 disruption, and is it how you want to run your business?
21 No.

22 Q. How long was the company on a 24-hour notice of
23 strike?

24 A. In 2015?

25 Q. Yes, sir.

1 A. This -- the 24-hour notice lasted till the middle
2 of June 2015, so around four-and-a-half months.

3 Q. And what was the status of job shadowing during
4 this time?

5 A. We had supervisors that shadowed nearly the entire
6 time along with their day job, and we periodically would
7 have engineers that would come off their job to shadow.
8 So it was a significant undertaking.

9 Q. Do you know how many individuals were shadowing in
10 2015?

11 A. Around a hundred.

12 Q. And how long did that shadowing continue?

13 A. For supervisors, through the duration. For
14 engineers, periodically throughout.

15 Q. So, you were basically running two workforces for
16 four-and-a-half months?

17 A. Yes.

18 Q. How, if at all, did running EMCO for that period
19 affect the company's operations?

20 A. Well, it created a significant amount of disruption
21 and as we got through 2015, we looked at, you know, the
22 impacts and the cost, and internally, as we talked about
23 it, we wanted to make sure we took steps to not have
24 that happen again.

25 Q. Do you recall how much the company spent on EMCO in

1 2015?

2 A. It was around \$30 million.

3 Q. What consideration, if any, did the company give to
4 initiating a lockout in 2015?

5 A. Initially when we got the strike notice, just to
6 provide some context, there was national negotiations
7 happening and there were other sites the USW was
8 striking, couldn't really tell why they were striking --
9 some and not others. Our initial feedback to the Union
10 was that we would only move forward with a lockout at
11 that time defensively, but we reserved the right,
12 obviously, to use the lockout in the future. As it
13 dragged on, we had a number of meetings and discussions
14 on the potential of locking out in 2015 because of the
15 impacts we were seeing.

16 Q. All right. And why did the company decide not to
17 lockout?

18 A. The main driver was at the time in 2015, we had
19 four sites that I mentioned earlier that were on
20 pattern. And one of those sites, Torrance, had a
21 signification operational disruption that they were
22 recovering from. So, we had a lot of concerns when we
23 looked at it that if we would have taken a lockout
24 action debate at Beaumont, excuse me, it would have
25 potentially would led to strikes at our other sites.

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1 And having to operate all four of those sites at once
2 would have been a significant challenge.

3 Q. All right. So, I believe you testified before that
4 that the two primary goals were moving off pattern and
5 achieving a 75-day strike notice. Did the company
6 achieve those two objections in 2015?

7 A. We did achieve those objectives, yes.

8 Q. To achieve those objectives, did the company offer
9 more than what was in its last best and final offer
10 four-and-a-half months earlier?

11 A. No.

12 Q. What lessons, if any, did the labor relations team
13 take from the 2015 bargaining process?

14 A. One of the main lessons that we took away from it
15 was that we wanted to make sure the protracted
16 bargaining and protracted EMCO was really not a
17 sustainable approach for us in the future of the costs
18 we incurred and the impacts and the disruptions, it was
19 a significant impact. The other thing that we observed
20 is -- and this was a bit of concern was -- in Beaumont,
21 the Union seemed very comfortable with taking a
22 protracted approach. Most of the times we see the
23 deadline creates a deal, and we saw the Beaumont Union
24 in 2015 be very comfortable in seeing us have to operate
25 EMCO and run a long -- go a long duration without having

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1 an agreement.

2 Q. Having lived through EMCO running for four-and-a-
3 half months, what conclusions, if any, did the company
4 reach with respect to doing so in the future?

5 A. We were going to avoid that situation in the future
6 given the strain, the impact, and the cost implications
7 that was not an approach we were going to be comfortable
8 with in the future.

9 Q. What take aways, if any, did the company labor team
10 reach about the possibility of a lockout in future
11 negotiations? I'm sorry, I'll withdraw that question.

12 All right. Moving forward to 2021, the Beaumont
13 negotiations. Were you America's labor relations
14 manager during the 2021 negotiations in preparation for
15 the negotiations?

16 A. Yes.

17 Q. Who was in your former role of area human resources
18 manager at Beaumont in 2021?

19 A. Blake Berend.

20 Q. And what was his role in the 2021 bargaining?

21 A. He served as the lead negotiator for ExxonMobil in
22 the 2021 Beaumont negotiations.

23 Q. And what role, if any, did you have in the 2021
24 Beaumont negotiations?

25 A. So, as the labor manager I filled the duties I've

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1 talked about earlier where I helped them with bargaining
2 preparation strategy and advise them on execution along
3 with being engaging with senior man- -- or management at
4 -- within the business line on our plans.

5 Q. Are you familiar with the term "request for
6 authority?"

7 A. Yes.

8 Q. Very briefly, what is a request for authority?

9 A. So, after, you know, in all bargaining events, we
10 have a lot of internal discussions on what the right
11 answer is, and there's a lot of views, and we go back
12 and forth. Eventually there's a proposal that goes
13 forward. We decide on what is going to be our strategy
14 and objectives, and we put forward a proposal for how
15 we'll handle bargaining in front of management. And
16 that's what they call the RFA or request for authority
17 process.

18 Q. And are you part of the team that prepares the
19 request for authority?

20 A. Yes.

21 Q. And were you part of the team in 2000 -- for the
22 2021 Beaumont negotiations?

23 A. Yes.

24 Q. Was there any discussion among that team while they
25 were preparing a request for authority regarding

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1 decertification?

2 A. No.

3 Q. Any discussion with the management team during the
4 request for authority process regarding decertification?

5 A. No.

6 Q. When did the local team start discussing the
7 request for authority for 2021?

8 A. Discussions happened in late '19 early '20 -- just
9 the initial preliminary discussions. That's when it
10 kicked off.

11 Q. And were you involved in that kickoff?

12 A. Yes.

13 Q. Do you recall when the pandemic was declared?

14 A. March of 2020.

15 Q. Prior to the declaration of the pandemic, can you
16 describe what the local management team considered as an
17 approach?

18 A. We were looking before the pandemic potentially at
19 a contract role given the BLADE Project startup timing.
20 We were debating a lot of different ideas. We also knew
21 -- we were really torn because we knew there were
22 aspects in the Beaumont contract we wanted to address.
23 In -- but also BLADE startup was coming up on -- in the
24 near future, so there were a lot debates. Our initial
25 lean was towards a role but there was a lot of internal

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1 debate.

2 Q. What is a roll?

3 A. A roll essentially is you agree to take the current
4 terms and conditions and extend the term along with the
5 wages often and maybe some other small items. Its -- it
6 doesn't involve full-blown bargaining.

7 Q. All right. So that, the roll was the lean --

8 A. That's where stakeholders were leaning at the time,
9 yes.

10 Q. At some point, did that lean change?

11 A. It did. BLADE capital was cut and that project
12 paused. So that changed -- and the overall financial
13 condition, the company was losing money, taking on a lot
14 of debt, and when you factor all that in, you know, it
15 created more dialogue around what would be our approach
16 to Beaumont in 2021.

17 Q. And that -- I assume that was all as a result of
18 the pandemic?

19 A. Yes. Demand as -- the pandemic caused significant
20 demand destruction across our industry.

21 Q. And if you know, did the company experience
22 financial losses in 2020?

23 A. Yes.

24 Q. Do you recall the extent of those losses?

25 A. In the neighborhood of \$22 billion.

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1 Q. And I believe you mentioned this. I just want to
2 be clear. And how was capital expenditures impacted?

3 A. So capital was cut dramatically. The number was in
4 the \$30 billion range if I recall. The implication
5 specifically for Beaumont was that it stopped and paused
6 the BLADE Project. So, the timing related to BLADE was
7 no longer in play. That project was paused with no idea
8 when it would be started again in the future.

9 Q. So how, if at all, did that impact the company --
10 the discussions about the RFA?

11 A. So given BLADE was not a consideration. As I
12 mentioned earlier, we, you know, we had talked a lot
13 about from the beginning on other aspects of the
14 Beaumont contract we wanted to address. So, as we
15 talked about it as a team, our direction moved towards
16 modernizing and updating the Beaumont contract
17 consistent with a lot of our other agreements. That
18 became the focus.

19 Q. If you recall, what were some of the key items that
20 the team discussed in terms of modernizing the contract?

21 A. Yeah, we look at all our contracts and look at the
22 different dynamics in the contracts. The things that
23 stood out in Beaumont were job bidding, the multi-class
24 operators, the 'A' Operator position, the fact that the
25 Blend and Packaging Plant had wage rates that were

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1 inconsistent with the market in our other sites. And
2 then we had implemented -- starting in 2019 -- some of
3 our other contracts, a lengthened wage progression. So
4 that was another item that was of interest.

5 Q. And did there come a time when the Beaumont
6 bargaining team discussed those issues with senior
7 management?

8 A. Yes.

9 Q. And when was that?

10 A. So there was a preliminary discussion in August of
11 2020.

12 Q. All right. And that was a request for authority
13 preliminary discussion?

14 A. It was a scoping discussion to look at more of what
15 would our strategy and objectives be, and then a, you
16 know, what were our thoughts on what we'll be proposing.
17 And it was really an opportunity for management to test
18 -- the Beaumont team to test the director on their views
19 on their thoughts.

20 Q. All right. And at that time, what items did the
21 Beaumont team focus on for discussion?

22 A. The focused on the items I referenced earlier: 'A'
23 Operator, job bidding, progression, and the B&P rates.
24 That was the main areas of focus.

25 Q. Any discussion of economics at that point?

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1 A. Yes. The local team -- and I was part of this, you
2 know, in consultation with the local team -- we thought
3 it was important to have wage increases in there given
4 what we were pursuing. So there was a proposed wage
5 increase of 3 percent total, first-year package in
6 there.

7 Q. And after that -- after the 3 percent?

8 A. The intent was to be to match the national pattern.

9 Q. And what term was discussed, if any?

10 A. So the focus on term was to make sure we remained
11 off pattern. We had spent a significant amount of
12 resources, time, money to separate the Beaumont
13 contract. You know, the last thing we want to do was go
14 into the next negotiation and go backward in our view.

15 Q. All right. And that two percent plus pattern, for
16 which group of employees was that discussed?

17 A. So the -- just to -- the package they -- we were
18 willing three --

19 Q. I'm sorry, did you say two percent of three
20 percent?

21 A. Three percent.

22 Q. Three percent. I'm sorry.

23 A. I'm sorry. What was the question?

24 Q. The three percent plus pattern; for which group of
25 employees was that discussed?

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1 A. For the refinery.

2 Q. Was there any discussion about economics for the
3 B&P?

4 A. We knew we needed to have very minimal economics
5 for the B&P in order to start to get those wage rates
6 back in line with the market. So, we had looked at it
7 as, you know, some kind of potential one-time payment,
8 but keeping those wage rates flat at the B&P was what we
9 were looking to do.

10 Q. And how did senior management respond to this
11 discussion?

12 A. They appreciated, I think, the analysis on the
13 contract and us understanding where opportunities were,
14 but that significant concerns with our proposal to
15 provide any wage increase.

16 Q. Did they say why?

17 A. It's -- from their perspective -- and they brought
18 up a lot of points that I think were relevant at the
19 time, and the company was not in good financial shape.
20 We were losing money. There was a lot of uncertainty in
21 the marketplace. You know, across the company we had
22 recruiting headcount freezes, we had job reductions, we
23 had from a compensation standpoint, salaries frozen
24 across the board for professional employees. So, they
25 were really worried it sent the wrong message given the

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1 -- this environment we were operating in it.

2 Q. Following the declaration of the pandemic, did the
3 company bargain contracts at any other locations?

4 A. Yes.

5 Q. How did the contemplated B&P -- I'm sorry, Beaumont
6 economic proposal compare to what was bargaining at
7 other locations during the same time frame?

8 A. It was higher than at -- there was one other site
9 that had comparable rates; it was higher than the other
10 agreements we had bargained. And all the agreements at
11 that time, we were -- new agreements we were bargaining
12 had concessions.

13 Q. All right. So, you testify that senior management
14 expressed concerns about proposed increases at Beaumont.

15 What was the local response's team -- the response
16 of the local team to that, if any?

17 A. Well, the local team provided feedback that they
18 didn't see any path to an agreement without some kind of
19 salary increases. And they felt that that would result
20 in a work stoppage or an extremely long protracted
21 bargaining event if we didn't include some kind of
22 salary increases for the refinery in the proposal.

23 Q. Ultimately, did the bargaining team recommend --
24 make a recommended request for authority?

25 A. Yes. In December, there was some meetings. The

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1 bargaining team laid out the case around why increases
2 needed to be part of our plan, and shared that with the
3 director.

4 Q. Who was the director?

5 A. So Steve Cope was the director at the time. He was
6 transitioning with Brian Ablett, so they were both
7 involved in those discussions.

8 Q. Who attended -- I assume it was a meeting with
9 these individuals?

10 A. That's correct.

11 Q. All right. And who attended the meeting?

12 A. The Beaumont bargaining team; so, Blake Berend, the
13 lead bargainer was there along with the Beaumont team,
14 Brian Ablett and Steve Cope as directors, and then
15 myself and Craig Stanley from labor law.

16 Q. And you said that there were two meetings in
17 December?

18 A. Yes.

19 Q. All right. Was there any discussion of
20 decertification during these meetings?

21 A. No.

22 Q. And what recommendations did the local team make?

23 A. So local team essentially made a recommendation
24 that -- to provide an economic package that I discussed
25 earlier in exchange for achieving the must have -- we

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1 called must-haves -- for the -- the items we talked
2 about earlier around progression, 'A' Operator bidding,
3 and differentiating the B&P wages.

4 Q. All right. You said we call them must-haves. Who
5 called them must-haves?

6 A. Well, the director is essentially how the
7 discussion went was said, you know, if we're going to
8 provide increases, we need to have these items. And so,
9 you know, those -- our internal terminology, we call
10 them must-haves. That's not a statutory position. It
11 doesn't mean it has to be exactly as we propose, but
12 we're going to address that topic in area negotiations
13 and make progress in order to enter into a new agreement
14 is what that means.

15 Q. Were there any other items that were not
16 necessarily must-haves?

17 A. Yeah, there were a number of other items that were
18 tabled, yes.

19 Q. All right. So, how did Mr. Cope and Mr. Ablett
20 respond to the local team's request for authority?

21 A. They said we'll agree and support the wage
22 increases you're proposing, but you've got to -- you
23 better -- you have to bring back these items.

24 Q. Was there any discussion of contract term?

25 A. Yes.

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1 Q. What was that discussion?

2 A. The -- some of our earlier comments, we had
3 separated Beaumont from the pattern and the -- all of
4 the discussion was to ensure that in the new Agreement,
5 it remained separated from the pattern.

6 Q. All right. When you discussed these primary
7 objectives which had, you know, you phrased as must-
8 have, you mentioned 'A' Operators. If you know, in
9 2021, did any other company -- USW sites -- have 'A'
10 Operators?

11 A. No other ExxonMobil sites.

12 Q. Did any other ExxonMobil sites have a 54-month wage
13 progression?

14 A. It had been implemented at some other sites at that
15 time, yes.

16 Q. All right. Did any other company sites have senior
17 bidding?

18 A. No.

19 Q. During the RFA meetings, what discussion, if any,
20 was there regarding the risk of strike?

21 A. So, there's a number of discussions on the
22 potential for a work stoppage because we knew the items
23 were, you know, we were pursuing -- we're of high
24 importance to the Union. And so we early on talked
25 about the potential implications of the strategy being

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1 that there is -- was a likelihood we would have a strike
2 at some point, or potentially protracted bargaining
3 where we may have to consider an offensive lockout.

4 Q. Did the local team have any discussion about how
5 its proposed bargaining parameters or objectives would
6 sit with members of the bargaining? You know, if they
7 had a chance to vote on it?

8 A. Yeah. The -- our internal view was that it would
9 be a difficult negotiations, but if employees got the
10 opportunity to vote on the package, that it would be
11 ratified.

12 Q. Was there any discussion about whether the team
13 thought that the Union committee would take these
14 proposals to a vote?

15 A. We were concerned given the 2015 experience; it
16 could potentially play out to a protracted bargain
17 again. But, given the environment at the time, and we
18 had, you know, some iterations we knew we -- you know,
19 with our proposals and some potential ideas as that, you
20 know, we felt there was a possibility that we take it to
21 a vote given our experience in 2015.

22 Q. What discussion, if any, was there regarding the
23 circumstance in which the company would consider a
24 lockout?

25 A. So, and as I highlighted earlier, we were -- there

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1 was a lot of discussions that we were not going to go
2 through 2015 again, and the long, protracted, costly
3 negotiations. So, you know, we had discussed it as a
4 potential. At that time, we were focused on an
5 agreement. We were focused on, you know, how do we get
6 a path to an agreement, and that's why we were looking
7 at the economics, what economics we put in there, you
8 know, what are the various iterations of our proposals
9 that could potentially get them over the line. So, we
10 acknowledged it was going to be a difficult negotiation,
11 and, you know, there was a likelihood a work stoppage
12 was a real scenario, but the focus was frankly on
13 getting an agreement.

14 Q. Had the company viewed lockout as a possibility in
15 any of its prior negotiations?

16 A. We viewed it as a possibility. It was -- I would
17 say a relatively remote possibility, although in 2015 as
18 it -- as the bargaining got more protracted, we had a
19 lot of discussions, you know, the April-May time frame
20 where we looked at that topic very, very closely and
21 spent a lot of time evaluating with a number of internal
22 meetings to discuss that as a possibility. Ultimately,
23 as mentioned earlier, the other sites in play and the
24 national negotiations in the background, you know, we
25 elected not to, but when we looked back in -- at our --

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1 looked back at the experience after 2015, it became a
2 real possibility for us if we had a long protracted
3 bargaining process.

4 Q. And during the company's discussions about the
5 possibility of a lockout, what discussion, if any, was
6 there regarding decertification?

7 A. None.

8 Q. In 2015, did the Union participate in 2015
9 bargaining? I'm sorry, the international union --

10 A. Yes.

11 Q. -- participate? Who from the international
12 participated?

13 A. The international representative was Hoot Landry;
14 that's who I was dealing with at the bargaining table.

15 Q. And how did you view his role?

16 A. He was the lead negotiator. There was certainly
17 local stakeholders, but most of the important
18 discussions happened directly with Hoot.

19 Q. And how, if at all, did the role of the
20 international change in 2021?

21 A. I talk with the team on an ongoing basis, and it
22 became clear based on the feedback I was getting from
23 the local team that the local committee was making the
24 decisions on 2021 negotiations.

25 Q. Who was the chief spokesperson for the Union in

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1 2015?

2 A. So, Hoot Landry. And then when 2015 started,
3 locally, Robert Hill was.

4 Q. And was there a primary spokesman -- spokesperson
5 from the international in 2021?

6 A. There was an international representative. I
7 believe what they -- I think Hoot Landry was involved
8 and Bryan Gross at one point. So there was some
9 international representatives but the indication we got
10 based on the dialogue was that it's the local union
11 officials were making the call in 2021.

12 Q. All right. So, in 2021, do you recall when the
13 bargaining commenced?

14 A. So, in 2021, the bargaining started it was early --
15 January 11th -- early, somewhere in the first half of
16 January.

17 Q. And the contract expired when?

18 A. January 31st.

19 Q. Is that a typical amount of time that the parties
20 devote to contract --

21 A. Yes.

22 Q. -- negotiations? And were you kept apprised of
23 events at the table by the local bargaining team -- the
24 management team?

25 A. Yes.

1 Q. And the proposals that were being exchanged?

2 A. Yes.

3 Q. What did the local bargaining team tell you about
4 the negotiation process in January?

5 A. So, you know, the feedback I continued to get is
6 they were making no progress.

7 Q. What about in February?

8 A. Same feedback. No progress.

9 Q. What was your reaction to the teams' reports in
10 January and February?

11 A. I wasn't surprised at first because, again, we were
12 -- we knew just based on the nature of how bargainings
13 worked and specifically Beaumont in the past that, you
14 know, things would likely happen towards the end of the
15 process. But as it got towards the end and we saw no
16 movement from the Union on any of our must-haves, when
17 we saw then it leaked in February. As the days rolled
18 on and it got into February, I became more and more
19 concerned.

20 Q. Did you discuss with your team the Union's response
21 to the company's must-haves?

22 A. Yes.

23 Q. And what specifically do you recall them telling
24 you in January?

25 A. So, the Union was unwilling to engage on the must

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1 have topics. They weren't interested in entering
2 counterproposals. There was essentially no movement
3 from them on our core areas, and there was just bizarre
4 things. When you look back -- when I look back at it, I
5 mean, the Union had put in things like the console
6 supervisor role to add that to the bargaining unit. The
7 Union -- the feedback I got from the local team is the
8 Union was -- wouldn't agree to tentatively agree
9 proposals at the table. So there was just some bizarre
10 things.

11 Q. In your 20 years with the company, had the Union
12 previously proposed including console supervisors in the
13 Union?

14 A. No.

15 Q. If you know, as of the contract expiration date on
16 January 31st, what was the Union proposing with respect
17 to job bidding?

18 A. So the Union was -- so as we were looking to
19 eliminate job bidding, the Union was looking to increase
20 job bidding. So, essentially we were moving in opposite
21 directions. He was looking to expand on the current
22 rights they had in the contract to increase the number
23 of job bids -- seniority job bids.

24 Q. So, as the parties reached the January 31st
25 expiration date of the CBA, did the company make any

1 movement on its must-haves?

2 A. Yes.

3 Q. If you recall, what movement did the company make?

4 A. We did things like agree to progression would apply
5 to new hires, right circling the 'A' Operators. So
6 there were a number of things that we did to try to see
7 if that would generate more engagement and, you know,
8 move us closer to progress in those areas.

9 Q. When you say the progression would apply to new
10 hires --

11 A. Uh-huh.

12 Q. -- so it wouldn't apply to current employees?

13 A. No. There'd be no impact on anybody that was a
14 current employee at the time.

15 JUDGE WEDEKIND: So, it would apply only to new
16 hires?

17 WITNESS: That's correct.

18 COURT REPORTER: I didn't hear you, Judge.

19 JUDGE WEDEKIND: I'm sorry. So, it would apply
20 only to new hires.

21 Q. BY MR. SPITZ: What would -- what changes, if any,
22 did the company make to its economic proposal in
23 January?

24 A. So, the company offered an economic proposal for
25 the refinery, if I recall correctly, was a two percent

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1 increase the first year with a \$1,000 one-time payment,
2 and then offered to match the pattern increases in the
3 out years. And the Union -- excuse me, at the Blending
4 & Packaging plant, there was a \$1,000, I believe, one-
5 time payment offered.

6 Q. So as the parties approached January 31st, what was
7 your assessment of the chances of reaching an agreement
8 before contract expiration?

9 A. It wasn't good.

10 Q. Why?

11 A. Because we -- there were -- we were making really
12 no progress. When you, as a bargaining team, we had to
13 achieve some progress in these -- the key areas I
14 mentioned earlier. And it was clear we weren't making
15 any progress, and the Union was insisting on a number of
16 topics like the console supervisor that were, and
17 already knew they were nonstarters from our perspective.

18 Q. Now, you said before that the parties weren't, or
19 that the Union wouldn't agree to any tentative
20 agreement. Can you tell us more about that?

21 A. Typically, a bargaining as you go through it agree
22 on different issues, you'll sign -- both parties will
23 sign a TA to acknowledge that that topic is agreed to.
24 And there were some topics that -- there were a couple
25 of topics that they had -- the local team had indicated

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1 to me they had agreement on, so I would ask, you know,
2 do we have a signed tentative agreement on those topics?
3 And the feedback I received is the Union was unwilling
4 to sign tentative agreements which, again, is just very
5 unusual in my experience.

6 Q. All right. So you -- as you reached the end of
7 January, you testified that you were pessimistic about
8 the chance of reaching an agreement by that date.

9 What were your thoughts about the likelihood of the
10 work stoppage?

11 A. Given where we were at it was -- it had increased
12 from where we started. They were still hopeful that at
13 some point the offer would be voted on. We got to the
14 end of January and made an offer we were hopeful that
15 would be voted on, but the -- we were concerned.

16 Q. All right. So you're the head of labor relations
17 for the entire company and you're not at the table,
18 right?

19 A. That's correct.

20 Q. What, if anything, did you do to try to facilitate
21 agreement?

22 A. So, towards the end of January, January 26th, I --
23 there's my peer with the international union's a
24 gentleman by the name of Mike Smith, so, we talked.

25 Q. And you said he's your counterpart -- I think is

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1 the word you used -- at the international.

2 Do you know what his role is, more specifically?

3 A. Yeah, Mr. Smith responsible for oil bargaining --
4 the oil bargaining sector for the United Steelworkers.

5 Q. How often do you speak to Mr. Smith?

6 A. We speak a couple of times a year; once or twice a
7 year, typically on significant topics.

8 Q. So, it's unusual that you speak to him?

9 A. Yes.

10 Q. Prior to the conversation that you referenced in
11 late January or early February, when was the last time
12 you had spoken to him?

13 A. Mr. Smith and I talked in September of 2020 when we
14 were working with our respective unions on one of our
15 proposals to suspend the savings plan match.

16 Q. Can you tell us about that interaction?

17 A. Yeah, we talked about, you know, I wanted to share
18 with him, you know, sort of the -- some more of the
19 rationale behind the proposal, and we talked and he
20 provided what he called a "supposal" at the time.

21 Q. All right. And before we get to this supposal, for
22 whom was the company proposing suspending the savings
23 plan match?

24 A. For all employees. So, all employees contrib- --
25 participate in the same savings plan with the same

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1 terms. We were proposing suspending it across the board
2 for employees in the corporation.

3 Q. And what prompted the company to seek to suspend
4 the savings plan?

5 MR. DOOLEY: Your Honor, I'm going to object to
6 relevance on this. I think we're getting pretty far out
7 there at this point.

8 JUDGE WEDEKIND: Yeah, what's the relevance?

9 MR. SPITZ: Well, he's trying to work out a deal
10 with Mr. Smith, but Mr. Smith also the supposal I think
11 is somewhat relevant.

12 MR. FLYNN: Your Honor --

13 MR. SPITZ: It is relevant.

14 MR. FLYNN: -- we had a full trial on this issue
15 right here in this very courtroom a few months ago --

16 MR. SPITZ: Not with respect to Beaumont. And it -
17 - Smith -- I mean, Mr. Smith proposed that he would
18 suspend the savings plan -- the Union would agree to
19 suspend the savings plan match if the company agreed to
20 a one-year extension of the contract to get back on
21 pattern, which was a nonstarter for the company, and is
22 exactly what the General Counsel and Counsel for the
23 Union is contending the company should have agreed to
24 when the lockout started.

25 MR. FLYNN: We don't agree to that bizarre position

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1 and that's fine. The record will speak for itself on
2 that.

3 JUDGE WEDEKIND: You don't agree with what? What
4 he just said? What don't you agree with?

5 MR. DOOLEY: Right, them saying that our position
6 is that they should have accepted that one-year
7 proposal.

8 JUDGE WEDEKIND: Well, I'm just -- well, that is
9 not before us, but do you disagree with the facts that
10 he just stated that the supposal was made?

11 MR. FLYNN: Oh, no, we don't disagree it was made.

12 JUDGE WEDEKIND: Okay.

13 MR. FLYNN: General Counsel put it in evidence, but
14 it's not our position that the company should have
15 agreed to that.

16 JUDGE WEDEKIND: Okay. I know, but I'm just
17 saying, can you stipulate to what he just said, that
18 that actually happens so we don't have to have his
19 testimony?

20 MR. DOOLEY: I think he's talking about the
21 supposal between Mike Smith and the conversation --

22 JUDGE WEDEKIND: All you want to do is put in the
23 facts of what happened, right?

24 MR. SPITZ: Yeah. That's all.

25 JUDGE WEDEKIND: Do you stipulate that that's what

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1 happened? What he just -- what the Counsel just said
2 happened? That a supposal was made that we would --
3 it's a supposal. That the Union would agree to
4 suspending the savings plan match across the board if
5 the company agreed to a one-year extension of --

6 MR. SPITZ: To put Beaumont back on pattern.

7 JUDGE WEDEKIND: To put Beaumont back on pattern.

8 MR. SPITZ: That was for all USW employees in the
9 company

10 JUDGE WEDEKIND: Okay. Do you agree that's -- that
11 happened?

12 MR. FLYNN: We don't. We can't. Your Honor, we
13 just don't have knowledge of that --

14 JUDGE WEDEKIND: Oh, I thought you litigated the
15 whole thing.

16 MR. FLYNN: -- conversation.

17 JUDGE WEDEKIND: I thought you litigated the whole
18 thing already?

19 MR. FLYNN: The whole 401K --

20 JUDGE WEDEKIND: Okay.

21 MR. FLYNN: -- suspension issue. These --

22 JUDGE WEDEKIND: But this didn't come up --

23 MR. DOOLEY: The savings plan match case was
24 limited to the facilities in Baytown and Baton Rouge,
25 Louisiana.

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1 JUDGE WEDEKIND: Yeah.

2 MR. DOOLEY: Beaumont came up kind of tangentially,
3 but it wasn't the direct subject of that litigation.

4 JUDGE WEDEKIND: All right. You just --

5 Mr. SPITZ: I -- it's two questions. It's --

6 JUDGE WEDEKIND: Yeah, yeah. That's -- that was
7 where I was at. Go ahead.

8 MR. SPITZ: Thank you.

9 Q. BY MR. SPITZ: So, what was Mr. Smith's supposal as
10 you described it?

11 A. He said that the -- his supposal was that they
12 would agree to suspend the savings plan match for a
13 period of time for our USW contracts in exchange for
14 putting Beaumont back on pattern.

15 Q. And that was four months before Beaumont bargaining
16 started?

17 A. Yes. September of 2020 and Beaumont started in
18 January of 2021.

19 Q. And what was your response?

20 A. Well, we talked about, you know, the work we'd done
21 to separate the contract before and I shared with him
22 that that was really a nonstarter from our perspective.

23 Q. All right. So let's go back to 2021 Beaumont
24 negotiations. Do you recall -- yeah, we're about an
25 hour and 15 in, Your Honor. Could we take a five- or

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1 10-minute break?

2 JUDGE WEDEKIND: Okay. I just want -- are you
3 going to go back to this phone call though in January of
4 2021?

5 MR. SPITZ: I was not.

6 JUDGE WEDEKIND: Oh. I thought that -- okay.

7 MR. SPITZ: I'm sorry. Yes.

8 JUDGE WEDEKIND: Okay.

9 MR. SPITZ: Yes, yes. That's --

10 JUDGE WEDEKIND: All right. So we heard about the
11 prior one, but we're also going to hear about --

12 MR. SPITZ: Or we're going to hear about this one.

13 JUDGE WEDEKIND: Okay. All right. Let's take a
14 break.

15 MR. SPITZ: Thank you, Your Honor.

16 *[Off the record]*

17 JUDGE WEDEKIND: Counsel.

18 Q. BY MR. SPITZ: Mr. Davis, you said that you
19 connected with Mr. Smith, I think it was at the end of
20 January or early February?

21 A. A couple of different times. The first time was
22 the end of January.

23 Q. Okay. And at that point had the Union agreed to
24 any of the must-haves?

25 A. No.

1 Q. Had they countered any of the must-haves?

2 A. No.

3 Q. What did you say to Mr. Smith during the -- during
4 that phone call?

5 A. I shared with him the must-have proposals, some of
6 the background on them, you know, talked about how --
7 the nature of those proposals, the other contracts we
8 have with the United Steelworkers, don't have things
9 like job bidding and 'A' Operators. So really to take
10 him through the proposals that we had on the table to
11 explain to him the background, and have some dialogue to
12 see where his head was at.

13 Q. And what, if anything, did you say about the
14 Union's proposals?

15 A. We didn't -- the topic of our conversation was
16 mostly on the company proposals.

17 Q. Okay. And how did he respond?

18 A. It was a productive conversation. He appreciated
19 the background. He shared with me that he would have
20 some conversations with the local team. It was clear he
21 wasn't aware they hadn't counter proposed on number of
22 the items; he understood, you know, why they were
23 important to us, and that he would go back and engage in
24 talk with the local team. But he was really clear that
25 ultimately the decision rests with the local team. They

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1 work under the Agreement, they get to decide if they
2 want to accept it or not.

3 Q. Now, you mentioned that you had two conversations
4 in that time frame with Mr. Smith?

5 A. Yes. I had a second conversation in early
6 February.

7 Q. All right. And what was said during that call?

8 A. So, one of the things we hadn't done at the end of
9 January was put in some of the national items that he
10 had requested. So we had done that after that first
11 call, but we still were making no progress and so, you
12 know, asked -- wanted to get his feedback on -- after
13 our first discussion where they were at, see if he could
14 help progress and move things forward. And he shared
15 with me, you know, essentially the same feedback at the
16 end that he continued to work with the local team, but
17 ultimately, it was their decision.

18 Q. Did he suggest any compromises?

19 A. No.

20 Q. What was your personal reaction when the Union
21 issued a strike notice on February 15th?

22 A. I was really surprised. Shocked. That -- we were
23 in the middle of an ice storm -- I mean, bargaining had
24 not made any progress, but I was surprised to see the
25 Union take that offensive measure.

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1 Q. Why?

2 A. Because they knew -- I felt they knew in their mind
3 that put us on a clock. It put us, again, into that
4 situation where if we didn't have an agreement now and
5 in 75 days, we've get in the dynamic where we had to run
6 ExxonMobil Continuous Operations. So it seemed, again,
7 the parties were far apart, but I was surprised to see
8 him take that aggressive measure given the EMCO
9 implications it would mean for us, which I was confident
10 they knew of.

11 Q. All right. And so the company's response was to
12 provide a lockout notice?

13 A. That's correct.

14 Q. Why?

15 A. I touched on this earlier but it's helped -- in
16 order to ensure there's a seamless transition in the
17 event of a work stoppage, so, we can have the workforce
18 that is part of EMCO take over the post and there's not
19 confusion on who's working what or where, or reporting
20 to work. It allows us to have a seamless transition.

21 Q. At the time the company received the Union's strike
22 notice, was there a specific plan on the company's part
23 to provide a lockout notice?

24 A. There was a plan to provide a lockout notice, yes.

25 Q. All right. But was there a plan to provide a

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1 lockout notice in the month of February?

2 A. Let me go back to your last question. So was there
3 a plan once we received it, was your first question.

4 Q. Prior to receiving it.

5 A. Oh, prior? Prior, we had no plans to provide a
6 lockout notice at that time, no.

7 Q. And so it was solely issued in response to the
8 strike notice?

9 A. That's correct.

10 Q. All right. And so, I think the better question
11 would have been, you know, what decisions, if any, had
12 the company made regarding lockout when it issued its
13 lockout notice?

14 A. Yeah. We had talked about the possibility if it
15 dragged on, but we were no where near issuing a lockout
16 notice. We were hopeful. I mean, our focus was on
17 getting a deal, and we were hopeful that as time went on
18 there, you know, it would create the dynamic where we
19 may see a break on some of these issues that were at a
20 standstill. So we had acknowledged early on that if we
21 had got into a situation where we had to run protracted
22 EMCO, that lockout may be a real possibility, but we
23 were -- there was no consideration or discussion at that
24 time that we would provide a lockout notice.

25 Q. All right. But, of course, that changed when the

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1 strike notice came out?

2 A. That's correct. The strike notice changed the
3 dynamic entirely. And it put us on a clock and
4 responded with a lockout notice at that time, February
5 15th.

6 Q. When the company received the strike notice, did
7 the company view a strike as a real possibility?

8 A. Yes.

9 Q. And why was that?

10 A. Well, if you go back to our 2015, there were sites
11 that were struck. It was hard to tell what was the
12 rhyme or reason. Marathon had just had a strike in St.
13 Paul Park. And these were -- we knew these were
14 difficult issues, so, that coupled with the fact some of
15 the feedback I got from the local team was that there,
16 you know, had been some discussions around the strike,
17 you know, as part of the bargaining process. So, all
18 those factors, a strike in our view was a real potential
19 possibility.

20 Q. And when you say there were discussions of strike
21 as part of the bargaining process, what do you recall
22 being told to you?

23 A. I recall the -- you know, where some of my debriefs
24 with the area team manager Blake, he would talk about
25 whether it was pictures --

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1 MR. DOOLEY: Objection, Your Honor. Hearsay.

2 JUDGE WEDEKIND: Repeat the question for me again,
3 and then --

4 MR. SPITZ: What he reported he testified that
5 there was discussion of strike, and I asked him, you
6 know, what specifically the bargaining team told him
7 regarding discussion of strike.

8 JUDGE WEDEKIND: Okay. What's the purpose of the
9 testimony?

10 MR. SPITZ: It goes to state of mind that the
11 company, when it issued a lockout notice, was taking the
12 Union's threat of strike seriously.

13 JUDGE WEDEKIND: All right. Okay. We haven't had
14 a hearsay objection up until now. I assumed it was for
15 that reason that it's -- it goes to the company's state
16 of mind?

17 MR. DOOLEY: With -- for that reason, I'll
18 withdraw, Your Honor.

19 JUDGE WEDEKIND: Okay. Overruled. I'll mark this
20 withdrawn. Thank you. You can proceed.

21 Q. BY MR. SPITZ: So what discussion of strike was
22 specifically reported to you that you recall?

23 A. So there was -- when it was reported to me, was
24 that there were pictures shown around picket sign
25 potential -- some comments around strike at the local

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1 table or with some of the local stakeholders. So, there
2 was no indication that they -- the notice was given and
3 that there was no intent to strike.

4 Q. How, if at all, did the Union's approach the
5 bargaining remind you of 2015 bargaining?

6 A. It felt eerily similar. It felt like it was a
7 playback again where the Union was going to sit in and
8 try to force us to run with a 24-hour notice on EMCO,
9 spend the resources, go through the strain on the
10 operations -- the disruption. It seemed like, based on
11 their proposals and the discussions that were happening
12 locally that that was the playbook that was being put in
13 play again.

14 Q. And if you know, when the Union issued the February
15 15 strike notice, had it held a strike authorization
16 vote?

17 A. Yes.

18 Q. And was that know to you at the time?

19 A. It was communicated to me by local folks, yes.

20 Q. And did you know when the Union held that strike
21 authorization vote?

22 A. December of 2020.

23 Q. Now, if you know, when the strike notice was sent
24 to the company, did the Union have a vote scheduled to
25 vote on the company's contract proposal?

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1 A. No.

2 Q. What consideration, if any, did you give to that?

3 A. Well, the Union didn't hold a vote. Again, it was
4 similar to 2015 where it went on for months and months
5 without a vote. And I felt, again, this was replay of
6 what had happened before.

7 Q. Now, were you aware that in 2021 there was a
8 decertification effort by certain employees of the
9 company?

10 A. In 2021? Yes.

11 Q. All right. Based on your communications with the
12 labor relations team at Beaumont, what was your
13 understanding of the reason that employees were pushing
14 to decertify the Union?

15 A. It was that, you know, the driver for the decert
16 campaign, what was shared with me, was employees want a
17 voice. They wanted to be able to vote on the company's
18 proposal and to be able to decide for themselves if they
19 wanted to take the offer or not. And the Union was not
20 allowing a vote.

21 Q. How did you personally view the likelihood of
22 employees decertifying the Union?

23 A. I viewed it as a miniscule possibility. It --
24 Beaumont with -- based on that site and our culture and
25 the background, I did not decert as an outcome to this

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1 bargaining event. I thought it may potentially generate
2 a vote which I thought would be healthy and productive
3 because it could have led to having an agreement, but I
4 didn't see decert as a real problem.

5 Q. When you say, "vote," you mean a vote on the CBA?

6 A. Vote on the company's proposals, yes.

7 Q. How, if at all, did the employee decertification
8 effort influence the company's decision to lockout?

9 A. None. There was no impact.

10 Q. When is the first time the Beaumont team discussed
11 the possibility of a lockout? The management team,
12 obviously?

13 A. Well, discussed a possibility back in -- I recall
14 in December of 2020 when we were preparing for
15 bargaining. We discussed after 2015 the potential need
16 to lockout in the future. For Beaumont specifically, I
17 recall the discussions back to December of 2020.

18 Q. Did bargaining continue after the strike and
19 lockout notices?

20 A. Yes.

21 Q. And based on the feedback of the management
22 bargaining team, what was your understanding of the
23 progress at the table?

24 A. There wasn't progress.

25 Q. And, if you know, as of the date of the -- as of

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1 the date of the strike notice, was the Union still
2 proposing to place the console supervisors in the
3 bargaining unit?

4 A. When you say, "the date of the strike -- the strike
5 notice given us or strike notice expired?

6 Q. Given?

7 A. Yes. On the day the strike notice was given, those
8 were still in the Union, or -- the Union was still
9 proposing to put the console supervisors into the
10 bargaining unit; that's correct.

11 Q. And so you received the strike notice. Did the
12 company continue to work towards an agreement?

13 A. Yes.

14 Q. And, if you know, did the company revise its
15 proposals between February 15 and May 1?

16 A. They made some adjustments some -- there was
17 dialogue back and forth, we used some carrots, some
18 sticks, you know, back and forth and bargained from that
19 time on the 15th up until the lockout.

20 Q. To your knowledge, did the parties come any closer
21 to an agreement during that time period?

22 A. No. Not -- we still remained far apart on our
23 must-haves and -- but very little progress.

24 Q. So, as the strike notice and the lockout notice
25 neared expiration, did there come a time when you had a

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1 meeting with the local bargaining team to discuss the
2 possibility of a lockout?

3 A. Yes.

4 Q. When did that happen?

5 A. So we had a meeting in early April, you know, the
6 strike lockout notices were set to expire on May 1st, so
7 we had a meeting in early April to evaluate the various
8 possibilities and potential options.

9 Q. And when you say, "we," who was at that meeting?

10 A. So it started with the local bargaining team,
11 myself, Craig Stanley.

12 Q. What was the purpose of the meeting?

13 A. So, again, really looking at options. We knew the
14 strike lockout notice period was expiring. We needed to
15 make a decision on, you know, what approach were we
16 going to take once that notice expires.

17 Q. What, if anything, was decided at the meeting?

18 A. So, in the meeting we decided that the proposal
19 that would go to the director would be to give the Union
20 a heads up that if we didn't have an agreement by the
21 time the strike lockout notice period expired, we'd move
22 forward with the lockout. And we were hopeful that with
23 a deadline at that part of the -- in that part of the
24 process, and by giving the Union a heads up, it would
25 have generated a new collective agreement.

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1 Q. And so did you take that proposal to the director?

2 A. Yes.

3 Q. And what was his response?

4 A. The director endorsed the proposal to move forward.

5 Q. What discussion, if any, was there regarding
6 decertification at the -- in the first meeting?

7 A. None.

8 Q. What about the conversation or the meeting with
9 Mister -- the director, with the recommendation to lock
10 out?

11 A. None.

12 Q. And what explanation, if any, was given to Mister -
13 - I assume it was Mr. Ablett at that time --

14 A. Uh-huh.

15 Q. -- as to the reasons the team was recommending a
16 lockout?

17 A. We felt -- it would create an environment that
18 created the highest probability we could get a deal done
19 in a -- at the time because it established a deadline.
20 And it also ensured that we didn't get into this long
21 protracted EMCO situation that we had been in before.

22 Q. All right. So, I think you mentioned that the
23 proposal was to speak to the Union, but if there was no
24 progress -- lockout on May 1?

25 A. Yes.

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1 Q. All right. If you know, did the company send any
2 correspondence to the Union regarding the lockout?

3 A. Yes.

4 Q. And do you recall about when that was?

5 A. April 23rd, the week before the strike lockout
6 notice's expired.

7 Q. And, if you know, did the Union make any proposals
8 to try to avoid the lockout?

9 A. Nothing more -- well, they did at one time make a
10 proposal to extend the contract in April. And it -- the
11 proposal was to put it essentially, put Beaumont back on
12 pattern which we had discussed previously and the Union
13 knew that maybe it was a nonstarter. But that proposal
14 was -- it was interesting because the proposal they gave
15 us in April was actually worse than the proposal they
16 gave us in September right before the lockout -- strike
17 or lockout could have taken place. So, the proposal
18 they gave us in April was nine months, put them back on
19 pattern with a bunch of stipulations whereas, you know,
20 obviously, the earlier proposal didn't have any of those
21 stipulations, and, you know, dealt with the savings
22 plan.

23 Q. If you know, in April was there any discussion of
24 rolling -- of 24-hour extensions?

25 A. I don't recall discussions on 24-hour extensions in

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1 April.

2 Q. Now, you testified that the company sent a letter -
3 - I think you said sent a letter to the Union on April
4 23rd -- what else, if anything, did the company do to,
5 you know, notify the Union that it would move forward on
6 May 1?

7 A. So my role, I reached out -- back out to Mr. Smith
8 on April 23rd.

9 Q. And what was your purpose in reaching out to Mr.
10 Smith?

11 A. I wanted to see if it would help to make progress
12 and reach an agreement. An so I shared with him in my
13 hopes that we could make progress on the items that were
14 outstanding, and wanted him to have a, you know, to
15 understand that we were serious about a lockout if we
16 couldn't reach an agreement.

17 Q. How did he respond?

18 A. He thanked me for the call and said similar to the
19 earlier calls that he would go back and talk with the
20 local team, but ultimately the decision on what the
21 local would agree to on our proposals was up to them.
22 They have to work under the Agreement.

23 Q. Did he offer to get involved?

24 A. He offered to go back in discussions with the local
25 team but didn't table any proposals or, you know, didn't

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1 offer any direct involvement, no.

2 Q. What assurances, if any, did he give you that the
3 Union would not strike?

4 A. None. No assurances.

5 Q. Did he ask you not to lockout?

6 A. No.

7 Q. Did the Union withdraw the strike notice?

8 A. No.

9 Q. Now, you mentioned the April 23rd letter to the
10 local, if you know, did the local give the company any
11 assurances it would not strike?

12 A. The feedback I received is that got no assurances.

13 Q. And did the lockout commence on May 1?

14 A. Yes.

15 Q. Was there any progress between April 23rd and May 1?

16 A. No.

17 Q. And how long did the lockout last?

18 A. Until early -- around 10 months until early 2022.

19 Q. And why did the company end the lockout?

20 A. We reached an agreement on a new collective
21 bargaining -- a new CBA.

22 Q. And did that Agreement address the company's must-
23 haves?

24 A. Yes.

25 Q. At any point during the lockout, did Beaumont

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1 management or corporate management ever consider ending
2 the lockout?

3 A. No.

4 Q. Why not?

5 A. Because we needed -- if we were to end the lockout
6 without an agreement -- so obviously, we considered
7 ending it with -- we would have an agreement. But if we
8 ended the lockout without an agreement, we would be back
9 in that situation where we would have to run ExxonMobil
10 continuous operations. So that was a situation and a
11 scenario that we did not want to encounter.

12 Q. Did management ever -- local management -- ever
13 express any concerns over the operation of Beaumont
14 during the lockout period?

15 A. No. Operational performance was very strong during
16 the lockout period.

17 Q. In all of your discussions with the Beaumont team,
18 did anyone on the team ever advocate lockout as a way to
19 decertify the Union?

20 A. No.

21 MR. SPITZ: Can we take a minute, Your Honor?

22 JUDGE WEDEKIND: Sure. Off the record.

23 *[Off the record]*

24 JUDGE WEDEKIND: Okay. Counsel.

25 MR. SPITZ: No further questions at this time.

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1 JUDGE WEDEKIND: Any cross?

2 CROSS EXAMINATION

3 MR. DOOLEY: Yes, Your Honor. Thank you.

4 Q. BY MR. DOOLEY: Good morning, Mr. Davis. My name
5 is Bryan Dooley and I'm an attorney for the National
6 Labor Relations Board, and I'm just going to be asking
7 you some questions following up on your earlier
8 testimony.

9 A. Sure.

10 Q. Mr. Davis, when did you personally become aware
11 that there was an ongoing effort to decertify the unit
12 at Beaumont?

13 A. I was aware for the first time probably mid
14 February or March of 2021.

15 Q. Yep. And the RFA period that you had been
16 discussing, that ran from about -- it started off at,
17 like, late 2019?

18 A. Yes. The RFA period was -- no, it wasn't late '19.
19 The RFA period was in December of 2020; the first RFA
20 period.

21 Q. Okay. I thought you had said it ended in December
22 of 2020?

23 A. The RFA was established in December -- started in
24 early December and was first established in middle of
25 December of 2020.

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1 Q. Okay. Thank you for clearing that up for me. I
2 must have misunderstood you a little bit.

3 JUDGE WEDEKIND: Well, I had -- I had the same -- I
4 thought you testified that the initially started --
5 there were discussions in late 2019 or early 2020?

6 WITNESS: Yeah, the initial planning discussions or
7 discussions on what approach we would take in the
8 bargaining it started way back in '19.

9 Q. BY MR. DOOLEY: Okay.

10 A. And we do probably a lot of places. There's all
11 kinds of dialogue on -- that goes back and forth over a
12 period of time. The decision wasn't made until the RFA
13 process in December of 2020.

14 Q. Now did you consider the discussions in later 2019
15 to be part of the RFA process? Because the question to
16 you at that -- I believe the question to you related to
17 the RFA from Counsel for the company, and your response
18 was early -- late 2019 or early 2020. So, we're just --
19 I'm trying to clarify --

20 A. Sure.

21 Q. What did you mean by that?

22 A. So that, that's where the net -- late '19 early
23 '20s is what I'm referring to as when we started to look
24 at Beaumont and evaluate it. The actual process to
25 establish the final RFA happened December 2020.

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1 Q. Okay. So the -- there was a process where you guys
2 were kind of figuring out --

3 A. You go back and forth --

4 Q. -- what you want to do.

5 A. -- yeah, there's all kinds of proposals that --
6 ideas that come into play. You know, we were looking at
7 all options, and that started in '19, but didn't
8 conclude until December of 2020.

9 Q. Okay. So by December 2020, you kind of figured out
10 what your finishing proposals were going to be and where
11 your bargaining positions were going to be?

12 A. Yes, sir.

13 Q. How often were you in contact with Mr. Berend or
14 the other members of the local bargaining team?

15 A. On an ongoing basis. I mean, there were times we
16 would talk everyday in a week. There would be times
17 we'd talk a couple days in the week. It depended on
18 with the rate and pace of bargaining really, but we had
19 ongoing dialogue throughout.

20 Q. When do you recall the decertification effort first
21 coming up in those conversations with the local
22 bargaining team?

23 A. We didn't talk about decertification and that
24 rarely would we or the first time it came up was and
25 again in that late February -- that February-March time

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1 period when it was mentioned to me that there was an
2 employee that was asking a lot of questions. And so,
3 Mr. Berend asked, you know, what do we do -- you know,
4 what is your view on how we should respond, and I took
5 him through, you know, told him to provide him the
6 standard response, provide him just the basic -- some
7 basic information and keep the focus on bargaining.

8 Q. Did Mr. Berend or anybody else with the local team
9 keep you updated on how that effort was progressing in
10 terms of how many signatures they needed at certain
11 points in time?

12 A. Not in that early 2021. Now is -- they did make me
13 aware at times there was apparently some public postings
14 that were -- that was being posted so they would share
15 feedback but I don't recall any specifics really on it.
16 It was never the focal point of our discussions or
17 frankly, took much of the dialogue we were having. We
18 were talking about where the Union was at with their
19 proposals, where we were at, what we wanted to do.
20 Obviously, we had in the early part of the year a
21 decision to make when the strike notice period expired.
22 So, our discussions were almost a hundred percent on
23 bargaining.

24 Q. And is it correct that the decertification petition
25 was filed about October 5th of '21?

1 A. That's what I recall, yes.

2 Q. After the petition -- well, let's first go before
3 the petition was filed.

4 Did those conversations about the progress and
5 status of the decertification effort, how many
6 signatures they collected; did that play any role in how
7 or when the company decided to present proposals to the
8 Union?

9 A. Just the -- say that again.

10 Q. Did your understanding of the status, the progress
11 of the signature collection effort, did that play any
12 role in how or when the company decided to present
13 proposals to the Union?

14 A. So, up until the time there was -- the petition was
15 filed, no. It didn't play any role. When the petition
16 was filed, we got a lot -- started to get a lot of
17 questions from our management on the petition, what it
18 means. So, you know, there was some -- that's probably
19 when there was the most dialogue was in that October
20 time period after the petition was filed.

21 Q. And what did those discussions consist of?

22 A. Just really a matter of trying to understand --
23 obviously, there was a petition filed, so management
24 wanted to understand what that meant. We had a -- we
25 were bargaining with the Union and hopefully, you know,

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1 the objective was to try to get to an agreement, but
2 things were going nowhere at the time. So, given things
3 were going nowhere, there was a lot of discussion to
4 understand how will the process play out in trying to
5 get insight around what are the key dates and deadlines,
6 and what will happen, and then what kind of information
7 do we want to provide employees?

8 Q. And the company took a pretty strong position in
9 favor of decertifying the Union, correct?

10 A. The company had some information regarding yes
11 voting because we saw it as, you know, an opportunity to
12 end the lockout.

13 Q. Or an opportunity to decertify the Union, correct?

14 A. The objective really at the time -- the decert from
15 our perspective was better than a lockout. And that's
16 what the -- the first thing we would've liked to have it
17 as an agreement and if you look, you know, at the time
18 period, if the -- if what happened and transpired in
19 January of 2022, would've happened in September,
20 October, November, December. We would have had an
21 agreement at that time.

22 Q. Were you involved as the America's labor relations
23 manager in drafting or reviewing any of the
24 communications that were sent out to employees during
25 the lockout?

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1 A. No. We talked about themes, but no, I didn't
2 review the communications.

3 Q. Are you generally familiar with those
4 communications?

5 A. Again, I talked about the themes. I know -- we --
6 I was familiar we were sending out some information,
7 yes.

8 Q. Are you aware that the company began telling
9 employees in May of 2021, that they could end the
10 lockout by decertifying the Union?

11 A. I don't recall that it -- our communications were
12 focused on bargaining for the most part. There may have
13 been one comment in there on -- but, what I recall is
14 the communications that were made from around our final
15 offer and through the summer were bargaining focused --
16 bargaining related.

17 Q. The election that resulted from the decertification
18 petition being filed, that was held by mail between
19 about November or December 2021; is that right?

20 A. That's -- what I recall, yes.

21 Q. Did the timing of that election affect in any way
22 how or when the company chose to present proposals to
23 the Union?

24 A. No, because we were -- we were waiting for, and I -
25 - Blake and I would talk a lot about -- I was convinced

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1 it would transpire like it did last time where at some
2 point -- the Union knew exactly where we were at. And
3 at some point they would tap 'em on the shoulder and say
4 we want to have some dialogue on all these topics and
5 that would -- the deal. We didn't plan any proactive
6 steps during the time period or any new proposals during
7 that time period, but if we would have seen progress in
8 bargaining, we would have cut the deal in October,
9 November. You name the date. The deal would have been
10 done and that was, again, our focus was always getting
11 in agreement, getting people back to work, and frankly,
12 we thought that -- the decertification? The -- we
13 thought that was our -- that increased our odds we would
14 get in agreement because when we saw decertification in
15 the past, typically it was to -- it forced the Union to
16 allow people to vote on proposals.

17 MR. DOOLEY: No further questions at this time,
18 Your Honor.

19 JUDGE WEDEKIND: How about from the Union?

20 MR. FLYNN: Yes, Your Honor, just a moment please.

21 CROSS EXAMINATION

22 Q. BY MR. FLYNN: Mr. Davis, my name is Patrick Flynn.
23 I represent the USW. We have not met before, correct?

24 A. That's correct.

25 Q. Quite a bit of your testimony today at least as it

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1 related to the bargaining that was going on in 2021 in
2 Beaumont is based on what somebody was telling you,
3 right? You never went to the table?

4 A. That is correct.

5 Q. Okay. And who would that be?

6 A. Who's communicated with me?

7 Q. Yeah, where were you getting all the information
8 that you testified about here today that was related to
9 the 2021 bargaining in Beaumont since you weren't there
10 in person?

11 A. Blake Berend was the primary contact that I had for
12 that negotiations. Blake Berend I think I mentioned
13 earlier was the area HR manager who's the lead
14 negotiator.

15 Q. Right. And who else were you getting information
16 from -- from Beaumont?

17 A. We'd have conference calls with the bargaining team
18 at times. So, you know, the entire bargaining team
19 would provide feedback. Phil Matherne. So Jason
20 Sylvester who was the labor advisor in Beaumont but the
21 majority of my dialogue on Beaumont was with Blake
22 Berend.

23 Q. You have spoke frequently here today about all
24 these discussions that went on prior to the negotiations
25 starting. There were Beaumont team members and there

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1 were people that you referred to either as upper
2 management or senior management, and I'm not sure. You
3 can correct me on that. But do you recall what I'm
4 referring to? I guess the discussions that started in
5 2019 and all the way through the finalization of the RFA
6 in December of 2020.

7 A. Yeah.

8 Q. Who are these people? Who were the players that
9 are doing all this discussing?

10 A. So, the -- I think I mentioned it earlier -- it's -
11 - my role, it's Craig Stanley from labor law and the
12 Beaumont bargaining team and that was Phil Matherne,
13 Blake Berend, Jason Sylvester. Now, when we get to the
14 RFA reviews, the directors are involved also. So you --
15 at the time in December it was Brian Ablett and Steve
16 Cope.

17 Q. So all of the discussions that were going on before
18 December of 2020 just involved you and Mr. Stanley and
19 the Beaumont team of Blake, Phil, and Jason that you
20 mentioned?

21 A. There might have been one or two other people, but
22 there may have been one or two other local people. I
23 think Anne Ealy was part of some of the discussions.
24 There was -- the main -- if you ask who the main
25 stakeholders were, those were the main stakeholders.

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1 Q. Okay. And so were you and Mr. Stanley the senior
2 management people that you alluded to?

3 A. No. The senior management people I alluded to was
4 based on our reviews on the plan. That would be Mr.
5 Ablett and Mr. Cope.

6 Q. Okay. And throughout the late 2019 pre-RFA
7 approval in December of 2020, those conversations were
8 Cope and Ablett involved as well, or they just didn't
9 get involved until December of 2020?

10 A. I believe I mentioned in my earlier testimony, we
11 had a preliminary touch base with them in August of 2020
12 where we talked about some of the ideas, some of the
13 plans, and then we went back and had a couple subsequent
14 follow-up meetings in December of 2020. I don't recall
15 their involvement before August of 2020.

16 Q. Okay. And you've also mentioned several times that
17 you knew the negotiations were going to be difficult
18 because of the -- because of your must-haves. They were
19 I guess just as important for you to take them away for
20 the Union to keep them. Would that be fair?

21 A. I think the must-haves were an aspect, but I also -
22 - based on how the Union had approached the previous
23 round of bargaining was another factor where I felt that
24 that was going to create, you know, a difficult
25 negotiation.

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1 Q. What were you referring to there?

2 A. Well, again, the last round we had a long
3 protracted negotiation and, you know, some of the unions
4 we worked that -- we have contracts with are more open
5 to change and dealing with different things. I thought
6 it was probably going to be more of a struggle in
7 Beaumont.

8 Q. And why did you -- I think you indicated multiple
9 times that you always felt that if the employees had a
10 chance to vote on the company's package, it would be
11 ratified, right? You said that many times. Is that a
12 yes or a no?

13 A. What time period are you talking about?

14 Q. Well, I'm going to ask you that next, but is that
15 generally what you said?

16 A. Certainly you want a final offer, yes. If you look
17 at our final offer, we felt that our outlook was if
18 employees would have gotten a chance to vote on it in
19 February of 2021, that -- there was a relatively high
20 probability it would have been ratified.

21 Q. And that was your last best and final would expired
22 on February 15th? Was that the offer you're referring
23 to?

24 A. Yes.

25 Q. Okay. Why were you so optimistic about that?

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1 A. I think you're putting words in my mouth. I
2 wouldn't say I was -- we felt there was a good
3 probability. We --

4 Q. Okay.

5 A. -- Union votes, I mean.

6 Q. Yeah.

7 A. If you can predict union votes, I got a job for
8 you.

9 Q. Right.

10 A. I mean, how those go. We felt that when people
11 looked at -- based on the -- the experience in '15 based
12 on what we were offering that there's a decent chance
13 that it gets ratified.

14 Q. I'm trying to really get a sense for why you
15 thought there was a decent chance. What was -- what did
16 you think the attraction was that would prompt a
17 positive yes vote?

18 A. Well, I think when you look at -- we had increases
19 that were built in, we had a lot of union contracts that
20 we'd bargained at the time that had zeroes or much lower
21 wage increases. And then the stability of having a
22 contract in place. So, I think given the backdrop of
23 the economic environment, you know, it was evident to
24 everybody that from an industry standpoint, (inaudible)
25 specifically given the demand destruction for its

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1 products that it was an extremely difficult business
2 environment so having a contract locked in place that
3 gave me security that I knew that has no layoff language
4 as an example in it, and some level of increases was a
5 pretty good deal given what was happening around us.
6 Layoffs and professionals and, you know, people that
7 didn't have a contract in Beaumont, we had significant
8 layoffs. So when you look at that formula, that's what
9 gave us some feeling that it would be ratified.

10 Q. Okay. You mentioned that when you got the February
11 15th strike notice from the Union, the company felt like
12 it had to give a lockout notice the same day, right?

13 A. That's correct.

14 Q. And had the company done that before in Beaumont --
15 the parties I should say -- the Union or the company?

16 A. It happened once before based on my knowledge, yes.

17 Q. Okay. And you said the reason the company gave a
18 lockout notice at the same time is to allow for a
19 seamless transition; is that --

20 A. Correct.

21 Q. -- you heard -- what I heard?

22 A. Correct. So in order -- if it comes to it where
23 there is a strike that takes place or the company wants
24 to lockout that way you can have -- you can transition
25 from your current workforce to your EMCO workforce.

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1 Q. And you felt like you couldn't do that if the Union
2 went on strike May 1st as opposed to being locked out?

3 A. Well, it provided us to provide a seamless
4 transition under either scenario.

5 Q. You're saying the lockout notice provided you with
6 a seamless transition if there was a lockout or a
7 strike?

8 A. Yeah. If, so, if a strike that takes place
9 obviously there is a lockout notice in place, the
10 lockout can -- allows us to make sure that there's not a
11 question around who's working, who's not working. It
12 allows you to make sure that you can turn the operation
13 over to the EMCO personnel to run it.

14 Q. I mean that's what EMCO is for, right?

15 A. Well, EMCO's -- yes, to prepare and to be able to
16 operate during a labor dispute or work stoppage.

17 Q. Sure. So, wouldn't you agree with me that if the
18 Union had struck on May 1st --

19 A. Uh-huh.

20 Q. -- and you had not given a lockout notice on
21 February 15th or any other time, the transition should
22 have been seamless -- seamless, because you had the EMCO
23 team ready to go?

24 A. I wouldn't agree with that statement at all. I
25 think it would have been a mess because you would have

1 had situations where you had some employees that Union
2 call the strike potentially work striking you would have
3 during the strike outage maybe something that want to
4 come back to work at different times and don't come back
5 to work. So being able to transition those units and
6 then being able to maintain that over time -- if you
7 didn't have a lockout notice in place, in my view it'd
8 be very difficult.

9 Q. And I think your testimony was that you did not
10 review any of the EIBs that the company published during
11 this 2021 --

12 MR. SPITZ: I'll object. I think that
13 mischaracterizes his testimony.

14 JUDGE WEDEKIND: Start over.

15 Q. BY MR. FLYNN: Did you review any of the EIBs
16 during the 2020 negotiations?

17 A. I remember --

18 Q. '21, sorry.

19 A. -- yeah. I remember we talked about EIBs
20 periodically in those -- some of the discussions I had.
21 I frankly don't recall what EIBs I might have reviewed
22 during the process and under the recollection of
23 reviewing specific EIBs.

24 Q. So, who wrote those?

25 A. The local Beaumont team.

1 Q. Who --

2 A. Beaumont bargaining team.

3 Q. You identified earlier?

4 A. Yeah.

5 Q. Do you know anybody that reviewed them before they
6 went out?

7 A. Our labor lawyer, Craig Stanley, reviewed them.

8 Q. You testified that the company did not consider
9 ending the lockout without an agreement. Do you
10 remember saying that?

11 A. Uh-huh.

12 Q. Did the company consider ending the lockout if the
13 Union was decertified?

14 A. In talking with our counsel, my understanding was
15 that was the law. That if he was to decertify then the
16 lockout would end.

17 Q. Did you consider ending the lockout if the company
18 had received some type of petition with over 50 percent
19 of the employees signing it?

20 A. Yes, we considered that under that scenario.

21 Q. And when were those considerations made?

22 A. All of our dialogue on that based on my memory is
23 after the petition was filed. So if the petition was
24 filed -- Mr. Dooley said, and I don't remember -- either
25 October 4th or 5th -- sometime early October, and we

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1 discuss, I think I remember Mr. Flynn, we discuss a lot
2 of different scenarios when, you know, we discuss all
3 kinds of things that could play out, some of the things
4 you're talking about now in -- so, that was one of a
5 number of scenarios and outcomes we did that -- you
6 know, we had discussed internally because they were
7 potential things that could happen, not with a petition
8 in play. You know, that was one of the things. Our
9 focus I can tell you was on bargaining and trying to see
10 if we get in agreement and we felt that at some point
11 the Union would tap us on the shoulder and acknowledge
12 that -- and start to work on some of these core
13 positions. And that's essentially what happened in
14 January of 2022.

15 Q. And as far as the information you received about
16 the decertification, is that, again, all coming from
17 Blake Berend?

18 A. Yes. I mean, there was -- you got to remember,
19 there was sometimes that I would have a conversation
20 maybe with Jason Sylvester -- somebody I mentioned
21 earlier. The -- and there was not a lot of -- again, it
22 wasn't a key topic in our discussions, but it was Blake
23 and maybe Jason. There may have been others locally,
24 but I don't recall. It was not that impactful at the
25 time.

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1 Q. At the time meaning before the October filing?

2 A. Well, once the October filing is we talked more
3 about it with the Beaumont team. It just -- it wasn't
4 in my role part of a focus area.

5 Q. And did Blake Berend tell you who that employee was
6 that was asking a lot of questions?

7 A. I never got to that level of detail.

8 Q. You don't know? Don't have a clue?

9 A. No. Questions on what?

10 Q. Well, I don't know. That's a good question in and
11 of itself because I think that you were asked about
12 learning about the decert --

13 A. Uh-huh.

14 Q. -- and I thought you said something that you had
15 heard there was an employee asking a lot of questions,
16 and you didn't say what those questions were about, and
17 I --

18 MR. SPITZ: I'm sorry. Can we have a time frame of
19 -- it's a little confusing. We've moved around a lot of
20 days.

21 Q. Do you remember answering Counsel for the General
22 Counsel's question, and you said, "I heard there was an
23 employee asking a lot of questions." I don't have the
24 data.

25 A. I don't recall -- what I recall the General

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1 Counsel's question was, when did decert come up? I gave
2 him the time frame. And what do we do or what did you
3 instruct him to do, and I provided feedback that -- to
4 answer questions, but I don't recall what employee was
5 asking questions.

6 Q. Okay. I think that the -- you had testified you
7 first heard about decert in February or March?

8 A. That's correct. That's when I responded to Mr.
9 Dooley's question --

10 Q. Right.

11 A. -- and I think he asked a follow-up question at the
12 time around -- I don't remember what your follow-up
13 question was -- but that's where I recall the questions
14 part coming into play.

15 Q. Right. It was. It was right -- that, that Q and A
16 --

17 A. It was -- I don't think it was part of his -- him
18 asking me questions who asked questions, it was -- my
19 feedback was we -- I provided guidance to them to answer
20 questions.

21 Q. Right. Mr. Dooley didn't ask you who was asking
22 questions, but I recall your answer was you heard there
23 was an employee asking a lot of questions.

24 A. I don't recall referencing any specific employee in
25 my response. I did advise them to answer questions

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1 which is part of our normal process.

2 Q. Right. You did not identify an employee and I
3 agree with you. I'm just asking you, you said -- I
4 believe your testimony earlier was, you heard that there
5 was an employee asking a lot of questions. Is that true
6 or false?

7 A. There was questions that our Beaumont team was
8 getting. I don't think it was by multiple employees or
9 one employee, but they were getting questions. And so
10 they asked my role, what should be our response? And I
11 shared with them my feedback on -- with employees asking
12 initial questions how they should handle that.

13 Q. Okay. And what were those questions about?

14 A. I don't remember the details. Again, it was --
15 that was not something we spent a lot of time on. I
16 shared with them -- there's some basic information to
17 provide that and as they got questions to make sure that
18 those were reviewed with our labor lawyer before
19 responding. But, we weren't -- this is not something we
20 were talking in depth about.

21 Q. But didn't it have something to do with
22 decertification?

23 A. Again, the period you're talking about is when the
24 topic had first come up.

25 Q. Correct.

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1 A. And it was -- it wasn't a topic we talked about in
2 any kind of depth in my updates and dialogue with Mr.
3 Berend.

4 Q. Okay. Well, that's not my question to. My
5 question to you is, was this about the decertification?
6 If you can remember.

7 MR. SPITZ: Is there a question there? I mean, I
8 think his answer --

9 MR. FLYNN: Well, he keeps saying that employees or
10 an employee was asking a lot of questions, but he's
11 never told me what are the questions about? I mean, if
12 he knows, he know, if he doesn't know, he doesn't know.

13 A. But I never got into specific questions with Mr.
14 Berend.

15 Q. Okay. Do you know if an employee was asking if he
16 could use the company email system to communicate about
17 the decert?

18 A. We never talked about an email or anything in
19 detail on. We never talked about specific questions.
20 Or, maybe this helps. We never talked about any
21 specific employees.

22 Q. Okay. That was one of my questions.

23 A. Yeah.

24 Q. And I understand that. What about a lockbox
25 mounted on the wall in a control room shelter? Was that

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1 ever one of the questions?

2 A. I don't recall - in my dialogue, no.

3 Q. Okay.

4 JUDGE WEDEKIND: Well, I think, you know, so you're
5 saying that when you were asked -- when you were told
6 about all these employees were asking questions at that
7 time, and you had told them you should provide the
8 standard answer I think was your testimony. You didn't
9 even know what it involved? You just said, "provide a
10 standard answer?"

11 WITNESS: Well, just to -- can I put some more
12 context behind it?

13 JUDGE WEDEKIND: Well, no. I'd actually like an
14 answer to his question.

15 WITNESS: Yeah.

16 JUDGE WEDEKIND: You were never met -- you never
17 told that the questions related to decertifying the
18 Union at that time?

19 WITNESS: No. The -- just to be clear. They told
20 me we were getting questions regarding decertification -
21 -

22 JUDGE WEDEKIND: That's it. That's the answer,
23 okay.

24 WITNESS: Yeah.

25 MR. SPITZ: That's what I was trying to ask you

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1 earlier.

2 WITNESS: I thought you were getting into the
3 specifics --

4 MR. FLYNN: Yeah, I mean, that was the question.
5 Is when did you find out about decertification. I --
6 that was kind of an --

7 JUDGE WEDEKIND: Well, no, I mean, he asked him
8 three times and he never answered, and so now he did.

9 MR. FLYNN: Okay.

10 JUDGE WEDEKIND: Okay? All right. Thanks.

11 MR. FLYNN: May I take a break, Your Honor, just to
12 --

13 JUDGE WEDEKIND: Sure. We can go off the record.

14 MR. FLYNN: -- talk to Counsel.

15 *[Off the record]*

16 MR. FLYNN: No further questions, Your Honor.

17 JUDGE WEDEKIND: Okay. Any redirect?

18 MR. SPITZ: No, Your Honor.

19 JUDGE WEDEKIND: Okay. Thank you very much.

20 Thanks for your testimony. I just want to ask, do we
21 have a date -- you know, I think I heard that the
22 ballots were impounded? When were they opened? I mean,
23 is that in the record?

24 MR. DOOLEY: It's in the complaint --

25 JUDGE WEDEKIND: Oh, is it.

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1 MR. DOOLEY: -- and I think it's admitted in the
2 answer. Let me double check. If not, we can just -- we
3 can put those documents in. I'm sure it's an --

4 MR. SPITZ: I'm sure we can stipulate to whatever
5 dates the Judge needs.

6 JUDGE WEDEKIND: I don't think it's in the
7 Complaint, but when the ballots were actually opened, is
8 it? They were impounded, right?

9 MR. DOOLEY: Yes.

10 JUDGE WEDEKIND: And were they -- were they opened
11 before --

12 UNIDENTIFIED SPEAKER: March 14th.

13 JUDGE WEDEKIND: -- I don't know when it was --

14 MR. SCHUDROFF: Early March sometime.

15 JUDGE WEDEKIND: March of?

16 UNIDENTIFIED SPEAKER: I have the chronology right
17 now.

18 JUDGE WEDEKIND: 2022?

19 MR. DOOLEY: So, 6(d) in the Complaint. On March
20 14th, 2022, the NLRB Region 16 --

21 JUDGE WEDEKIND: Okay.

22 MR. DOOLEY: -- opened and counted the ballots and
23 prepared and issued to tally the ballots showing that a
24 majority of the ballots cast were for the Charging
25 Party, but no certification of representative has since

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1 been issued.

2 JUDGE WEDEKIND: Okay. Thank you. You're right.
3 It was -- I just wondered.

4 MR. DOOLEY: And I'll double check that that's
5 submitted in the Answer, but I believe so.

6 JUDGE WEDEKIND: Okay. So, we finished with this
7 witness a little sooner than we thought, right?

8 MR. SPITZ: We did.

9 JUDGE WEDEKIND: Yeah. And do you have another
10 witness prepared to go?

11 MR. STANLEY: No.

12 JUDGE WEDEKIND: Okay. It happens.

13 MR. STANLEY: Sorry.

14 JUDGE WEDEKIND: I'm not happy about it.

15 MR. STANLEY: No, we would have liked to take
16 advantage of that time to have more for the three days
17 but we're still very confident we can finish in --

18 JUDGE WEDEKIND: Three days. But there might be
19 rebuttal, is that possible at this point? Are you
20 thinking rebuttal?

21 MR. DOOLEY: Yeah, I mean, there's going to be a
22 couple things. On the main case, we may not need to
23 rebuttal. The main thing we may do to rebuttal on is
24 the documents issued just depending on what they put on
25 there, and if we feel like we need additional witnesses

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1 to shore up --

2 JUDGE WEDEKIND: Uh-huh.

3 MR. DOOLEY: -- how the documents were maintained
4 and accessed. On the case in chief, I don't know.
5 We'll figure that out, but it should be brief if we do.

6 JUDGE WEDEKIND: Okay. But you think -- confident
7 that we could get through if you just -- even if you had
8 like one rebuttal witness we could get it done?

9 MR. STANLEY: We are, Your Honor. We are.

10 JUDGE WEDEKIND: Okay. I'll just forewarn you
11 though, if we don't finish, I'd be inclined to finish up
12 by Zoom rather than taking a third visit.

13 MR. STANLEY: Understood.

14 JUDGE WEDEKIND: Okay? All right. Anything else?

15 MR. STANLEY: Your Honor, I wanted -- I'm sorry,
16 please.

17 JUDGE WEDEKIND: No, go ahead.

18 MR. STANLEY: No, one issue that may save time -- I
19 don't know if they're available -- but we talked about
20 the --

21 JUDGE WEDEKIND: All right. Want to go off the
22 record?

23 MR. STANLEY: Yeah.

24 JUDGE WEDEKIND: All right. Off the record.

25 *[Off the record]*

1 JUDGE WEDEKIND: Okay.

2 MR. SPITZ: So, we have copies of all of the
3 bargaining proposals that we think would help the
4 record. And it -- you know, we initially proposed them
5 as a Joint Exhibit. I don't know if you'd be prepared
6 to stipulate to them, but I do think it would be helpful
7 for the Judge.

8 MR. DOOLEY: I'll talk to management. This thing I
9 think, you know, if they're going to end up going in
10 which I think we've talked about some of the bargaining
11 to some extent. Judge, would your inclination be that
12 those are going into the record?

13 JUDGE WEDEKIND: Yeah. Because of the testimony
14 that we had, I thought why wouldn't they come in at this
15 point.

16 MR. DOOLEY: Okay. We probably won't have a
17 problem. I'll touch base with you guys after I talk to
18 management about it. But I don't see a reason to spend
19 a lot of time on it if they're going in.

20 MR. SPITZ: That sounds good.

21 MR. STANLEY: We have to get them all finally
22 organized anyway --

23 MR. SPITZ: Yeah.

24 MR. STANLEY: -- we just wanted to raise the issue.

25 MR. FLYNN: We don't think they're all relevant,

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1 Your Honor, but I --

2 JUDGE WEDEKIND: Uh-huh.

3 MR. FLYNN: -- you know, we've committed to agree
4 on their authenticity and there's no issue about that.

5 JUDGE WEDEKIND: Right. And there's been some very
6 vague testimony about whether there was other things
7 that were put on the table or tabled, and things like
8 this, and I assume a lot of that's not relevant because
9 we didn't get into detail, but that's going to be in
10 there, too, right? It's just going to all going to be
11 in there.

12 MR. STANLEY: It will be. And as we said
13 yesterday, we still intend one of our -- maybe our only
14 -- but one of two witnesses are going to focus on some
15 of the key bargaining issues. Certainly not going
16 through every meeting --

17 JUDGE WEDEKIND: Yeah, yeah.

18 MR. STANLEY: -- every proposal, but some of the
19 key issues that have been raised in general terms, so.

20 JUDGE WEDEKIND: Right. Okay. Anything else?

21 MR. DOOLEY: Nothing from me at this time, Your
22 Honor.

23 JUDGE WEDEKIND: Okay. See you March 21st and
24 obviously, you know, there may -- discuss how to proceed
25 from there. I mean, after we get the testimony, what to

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1 do with the documents -- these documents that are in
2 issue, how we're going to deal with that, and we can
3 talk about that then. I do anticipate that I'm going to
4 want some legal analysis from both sides on this. I
5 mean, I could do my own, but I'd like to hear your views
6 under precedent on the waiver, et cetera, and how are we
7 going to do that. Is that going to be -- are going to
8 hold the record open? Decide -- just think about this,
9 that's why I'm telling you now.

10 MR. DOOLEY: Uh-huh.

11 JUDGE WEDEKIND: Think about how you see it going
12 forward. Will there be a briefing period just on that
13 issue? Will I make a ruling? You know, holding the
14 record open, give you an opportunity to appeal my ruling
15 -- either side -- depending on how it goes, and will all
16 that happen before we close the record and then proceed?
17 Just think about, you know, what your position is going
18 to be on that, okay?

19 MR. DOOLEY: Yes, Your Honor. Thank you.

20 JUDGE WEDEKIND: Okay. Off the record.

21 [Off the record]

22 ***[Whereupon, the hearing was recessed at 11:49 a.m.,***
23 ***to resume proceedings at 9:00 a.m. on Tuesday, March 21,***
24 ***2023.]***

25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter ExxonMobil Corporation and United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied-Industrial, Service Workers International Union, Case Nos. 16-CA-276089, et al, on Thursday, the 16th of February, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

David Molinaro, Court Reporter

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